1. Parliamentary privilege — N.S — New ~~etc~~.

ED

New York (State). Assembly.

A COMPILATION OF CASES

OF

Breaches of Privilege of the House,

IN THE

Assembly of the State of New York,

WITH THE

REPORTS OF STANDING AND SPECIAL COMMITTEES AND THE PROCEEDINGS AND JUDGMENTS THEREON,

TOGETHER WITH

FULL REFERENCES TO ALL ACTION IN EACH CASE,

From 1777 to 1871.

PREPARED PURSUANT TO A RESOLUTION OF THE ASSEMBLY, PASSED APRIL 18TH, 1871, UNDER THE SUPERVISION OF

CHARLES W. ARMSTRONG, CLERK.

ALBANY:
THE ARGUS COMPANY, PRINTERS.
1871.

STATE OF NEW YORK:

IN ASSEMBLY,

ALBANY, *April* 18, 1871.

On motion of Mr. FIELDS, of New York:

Resolved, That the Clerk of this House have prepared, for the use of the Legislature, a compilation of the majority and minority reports on contested elections to seats in this House, and that five hundred copies of the same be bound for the use of the Legislature; and that he also cause to be compiled the majority and minority reports of any standing or special committee appointed by this House to investigate any breaches of the privileges of this House, and that one copy of each of said compilations be sent to each member of the present House.

By order.

C. W. ARMSTRONG,
Clerk.

INTRODUCTION.

In the preparation of this compilation, the object of the foregoing resolution of the Assembly has been earnestly prosecuted, and as fully complied with as the nature of the work would permit, and with the purpose of furnishing useful precedents and reliable and valuable authority.

Many of the cases are unimportant, but there is given no discretion to select and no authority to omit them. Such discretion and authority would have relieved this compilation of much valueless matter.

The leading and ably contested cases are given sufficiently full to avoid the necessity of references to the original journals and documents, beginning with the first complaint or motion and ending with the execution of the final judgment of the House.

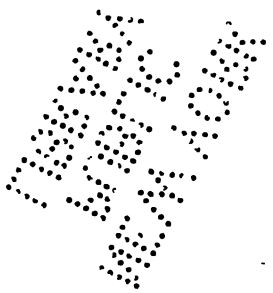
In all instances, full and definite references are made to all proceedings, evidence and conclusions, thereby enabling any one to easily obtain the entire proceedings in each and every case.

Efforts have been made, and it is hoped successfully, to render the index complete and explicit with the purpose of its taking in some degree the place of a digest, which would be of great value, but which is not authorized to be made by the terms of the resolution.

This compilation has been prepared under my supervision, with the assistance and co-operation of Lyman B. Smith, assistant clerk, and William J. Wilson, deputy clerk.

C. W. ARMSTRONG,
Clerk of the Assembly.

ALBANY, *November*, 1871.



A COMPILATION OF CASES

OF

BREACHES OF PRIVILEGE OF THE HOUSE

IN THE

ASSEMBLY OF THE STATE OF NEW YORK.

In the Matter of the Breach of Privilege of Jeremiah French and Silas Marsh.

STATE OF NEW YORK:

ASSEMBLY CHAMBER,
KINGSTON, SUNDAY, *October 10th*, 1779.

Mr. Williams, a member of this House, complained of a breach of privilege committed on the person of Benjamin Birdsall, Esq., a member of this House, by Jeremiah French and Silas Marsh.

Ordered, That the said complaint be referred to the consideration of the committee of privileges and elections, and they report thereon with all convenient speed.

Assembly Journal, 1779, page 58.

REPORT OF COMMITTEE.

October 20th, 1779.

Mr. Harpur, from the committee of privileges and elections, to whom was referred the complaint on behalf of Benjamin Birdsall, Esq., a member of this House, against Jeremiah French and Silas Marsh for a breach of privilege, report that the truth of the allegations of the complaint doth fully appear, and that the said Jeremiah French, as less, or of the plaintiff, and the said Silas Marsh, his attorney, are both guilty of a breach of privilege.

Ordered, That the consideration of the said report be postponed until the next meeting of the Legislature.

Assembly Journal, 1779, page 77.

In the Matter of the Breach of Privilege of Thomas Goadsby.

CHARGED WITH DEFAMATORY WORDS AGAINST THE LEGISLATURE.

NEW YORK CITY, *March 22d*, 1785.

Whereas, This House is informed that a certain Thomas Goadsby, of the city of New York, merchant, has lately spoken several malicious and defamatory words derogatory to the honor and dignity of the Legislature and tending to excite and promote dissension and disaffection to the government; thereupon,

Ordered, That the sergeant-at-arms of this House attach the body of Thomas Goadsby and keep him in custody and bring him to the bar of this House, on Wednesday next at eleven o'clock in the forenoon, to answer in the premises; and,

Ordered, That the said sergeant-at-arms do also summon William Ketchum and his wife, Jeronimus Riker and John Thurman, to attend at the same time and place to be examined as witnesses relative to the facts mentioned in the preceding order.

Assembly Journal, 1785, pages 109, 110.

THOMAS GOADSBY AT THE BAR OF THE HOUSE.

March 23d, 1785.

The order of the day being read, and the sergeant-at-arms, pursuant to the order of this House of yesterday, being attending with Thomas Goadsby in his custody, the said Thomas Goadsby was led to the bar of the House and the charge against him, that he has lately spoken several malicious and defamatory words derogatory to the honor and dignity of the Legislature and tending to excite and promote dissension and disaffection to the government, being read to him, he pleaded thereto not guilty and that he had not at any time spoken disrespectfully of this government or said anything that might tend to sow sedition.

The House then proceeded to examine William Ketchum and Jeronimus Riker, two of the witnesses against the prisoner, who were also cross-examined by the prisoner; thereupon,

Ordered, That the prisoner be continued in the custody of the said sergeant-at-arms, and brought again to the bar of this House to-morrow at eleven of the clock in the forenoon; that the prisoner be allowed counsel in his defense; that the witnesses who have been summoned do attend again at the time above mentioned, and that the sergeant-at-

arms do summon Albion Cox to attend this House as a witness at the same time.

Assembly Journal, 1785, page 111.

THOMAS GOADSBY AGAIN AT THE BAR OF THE HOUSE.

March 24th, 1785.

The order of the day being read, and the sergeant-at-arms attending with Thomas Goadsby, on the charge against him as entered in the journal of this House on the two preceding days, the House, as well for the safety of the members as of the great number of spectators present, on account of the weakness of the building which contains the Assembly chamber, adjourned to the City Hall of the city of New York, and ordered the sergeant-at-arms to attend there with the prisoner, and to direct the witnesses summoned to attend at the hall without delay.

The House, being met in the City Hall, proceeded to the further examination of the witnesses against the prisoner, and Albion Cox and Jeremiah Wool, Esq., were examined as witnesses against the prisoner and were cross-examined by the counsel for the prisoner, and Jonathan Piercy and the other two witnesses last before named were examined as witnesses on behalf of the prisoner, and his counsel were fully heard in his defense; thereupon,

Ordered, That the prisoner be continued in custody of the sergeant-at-arms in the recess of the House, and be brought again to the bar when the House shall be convened.

THOMAS GOADSBY FOUND GUILTY AND ORDERED REPRIMANDED AT THE BAR OF THE HOUSE.

March 25th, 1785.

The House then resumed the consideration of the charge against Thomas Goadsby, a prisoner in the custody of the sergeant-at-arms, and the evidence given against the prisoner, and also the evidence given on his behalf and the defense made by the counsel for the prisoner, and after the same had been fully recapitulated, heard and considered, Mr. P. W. Yates moved for a resolution and order in the words following, viz.:

Resolved, That it appears from the evidence offered relative to the charges against Thomas Goadsby, that he has spoken several malicious and defamatory words derogatory to the honor and dignity of the Legislature and reflecting on their proceedings, and is therefore guilty of a misdemeanor and contempt of the authority of this House.

Ordered, That the said Thomas Goadsby be brought to the bar of this House, and upon his asking the pardon of the House for his fault, and paying the sergeant's fees, he be discharged from custody.

Mr. C. Sands then made a motion that the House, instead of the resolution proposed by the last mentioned motion, should come to a resolution and order in the words following, viz.:

Resolved, That it appears to this House that from the evidence relative to the charge against Thomas Goadsby that he has spoken defamatory words derogatory to the honor and dignity of the Legislature and of this House; and the House do order that the said Thomas Goadsby be let to the bar and reprimanded by the Speaker in the chair, and that he be thereupon discharged from the custody of the sergeant-at-arms on payment of his fees.

Debates arose on the resolution and order proposed by the last mentioned motion, and the question being put whether the House did concur in the same, it passed in the negative.

The question being then put whether the House did concur in the resolution and order proposed by the motion of Mr. P. W. Yates, it passed in the affirmative; thereupon,

Resolved, That it appears from the evidence offered relative to the charge against Thomas Goadsby, that he has spoken several malicious and defamatory words, derogatory to the honor and dignity of the Legislature and reflecting on their proceedings, and is therefore guilty of a misdemeanor and contempt of the authority of this House.

Ordered, That the said Thomas Goadsby be brought to the bar of this House, and upon his asking pardon of the House for his fault and paying the sergeant's fees, he be discharged from custody.

THOMAS GOADSBY ASKS THE PARDON OF THE HOUSE.

The sergeant-at-arms, by order, then brought the prisoner, Thomas Goadsby, to the bar of the House, and the preceding resolution being read to him he thereupon asked the pardon of this House for the fault he had committed and declared he was sorry that he had given the House so much trouble.

Assembly Journal, 1785, pages 114, 115.

In the Matter of Breach of Privileges of William Kettletas.

FOR PUBLICATION IN THE ARGUS LIBELOUS AND VILLIFYING ATTACK UPON THE LEGISLATURE.

STATE OF NEW YORK:

CITY OF NEW YORK,
ASSEMBLY CHAMBER, *March* 8, 1796.

ARREST OF WILLIAM KETTLETAS ORDERED.

Mr. I. Morris made a motion that the House should agree to a resolution with recitals, which was read and is in the words following, viz.:

Whereas, Certain publications, under the signatures of William Kettletas, have appeared in the Argus of the 22d of February last, and the 5th of March, instant, arraigning the justice and impartiality of the House, and charging the representatives of the people with refusing to impeach certain officers of this State upon the clearest evidence, and containing sundry other charges highly injurious to the dignity of this branch of the Legislature; and,

Whereas, Publications villifying and misrepresenting the proceedings of this House are calculated to create distrust and destroy that confidence which the good people of this State have and of right ought to have in their representatives; therefore,

Resolved, That the said publications are a breach of the privileges of this House, and that the said William Kettletas be forthwith taken into custody by the sergeant-at-arms and brought to the bar of this House to answer in the premises.

That debates were had thereon, and

Mr. Speaker put the question whether the House did agree thereto; it was carried in the affirmative in the manner following:

For the affirmative, 33. For the negative, 27.

Assembly Journal, 1796, page 120.

ASSEMBLY CHAMBER, *March* 9, 1796.

WILLIAM KETTLETAS BROUGHT TO THE BAR OF THE HOUSE.

The sergeant-at-arms, pursuant to the order of the House of yesterday, being attending with William Kettletas in his custody, the said William Kettletas was let to the bar of this House, and a certain publication, under the signature of William Kettletas, as published in the Argus of the 22d of February, was read to him.

Mr. Addison then made a motion that a question be put to the prisoner at the bar in the words following, viz.:

"Are you the author of the publication just now read to you, and did you direct the same to be printed?"

Which was agreed to by the House.

Mr. Speaker put the said question to the prisoner, to which the prisoner answered:

"I am the author, and did direct the same to be printed."

Then the publication, under the signature of William Keftletas, as published in the Argus of the fifth instant, was read to him.

Mr. Addison then made a motion that a question be put to the prisoner in the words following, viz.:

"Are you the author of the publication just now read to you, and did you direct the same to be printed?"

Which was agreed to by the House. Thereupon,

Mr. Speaker put the question to the prisoner, to which the prisoner answered:

"I am the author, and did direct the same to be printed."

Thereupon,

Ordered, That the prisoner be removed from the bar by the sergeant-at-arms, and remain in his custody until the further order of the House.

Thereupon, Mr. Morris made a motion that the House should agree to a resolution in the words following, viz.:

Resolved, That it appears from the confession of William Kettletas, that he is the author of a certain publication printed in the Argus on the 22d of February last, and of one other publication printed in the Argus of the fifth instant, and that he the said William Kettletas directed the same to be printed and published, which said publications contain charges highly injurious to the honor and dignity of this branch of the Legislature.

WILLIAM KETTLETAS FOUND GUILTY.

Resolved, therefore, That the said William Kettletas is guilty of a misdemeanor and contempt of the authority of this House.

Ordered, That the said William Kettletas be brought to the bar of this House, and upon his asking the pardon of the House for his offense, and paying the sergeant's fees, he be discharged from custody.

HE DECLINES TO ASK PARDON.

The prisoner being again brought to the bar and the preceding resolution having been read to him, he answered:

"*I am not conscious of having committed any offense, and therefore I will not ask the pardon of this House.*"

Three huzzas from the spectators.

At this moment a number of persons in the bar gave three huzzas, and made a great deal of clamor and noise, which for some time interrupted the business of the House.

ORDERED IMPRISONED.

Thereupon,

Resolved, nemine contradicente, That the said sergeant-at-arms take the said William Kettletas from the bar of this House and deliver him to the keeper of the jail of the city and county of New York; that the said William Kettletas be imprisoned in the said jail until the further order of this House, and that the Speaker do issue his warrant accordingly.

Thereupon, the Speaker did issue his warrant and the same was delivered to the sergeant-at-arms.

HE WAS IMPRISONED.

The sergeant-at-arms reported that pursuant to the warrant to him directed and delivered, he had delivered William Kettletas into the custody of the keeper of the jail of the city and county of New York.

COMMITTEE OF INQUIRY APPOINTED AS TO PERSONS INTERRUPTING PROCEEDINGS.

Then the House entered into the following resolution:

Whereas, Insults have this day been offered to the people of this State represented in this House, by indecent huzzaing and clamor and other irregularities; and

Whereas, Indignities offered to the people of this State, through their representatives, ought to be severely punished; therefore,

Resolved, unanimously, That a committee be appointed to inquire and report to this House the names of all persons who have been guilty of a breach of the privileges of this House, by indecently interrupting or disturbing their deliberations and proceedings in the case of William Kettletas, and that Mr. Dubois, Mr. Hopkins, Mr. Addison, Mr. Bird and Mr. Miles be of the said committee.

Ordered, That the printer to this State print a copy of the preceding resolution in his paper of to-morrow.

Then the House adjourned until 10 o'clock to-morrow morning.

Assembly Journal, 1796, pages 122, 123 and 124.

ASSEMBLY CHAMBER, *March* 10, 1796.

DISORDERLY PERSONS ORDERED ATTACHED.

On motion of Mr. Lawrence,

Resolved, That the committee of the House appointed for the purpose of inquiring into and reporting to this House the names of all persons who have been guilty of a breach of the privilege of this House, by indecently interrupting their deliberations and proceedings, shall be excused from their attendance on the duties of this House, so long as an attention to the duties assigned to them shall be rendered necessary.

Mr. I. Morris arose in his place and informed the House that there were certain persons attending in the bar who could discover the names of some of the disorderly persons who interrupted the business of this House on yesterday. Thereupon,

Ordered, That the bar be cleared, which was done accordingly.

A number of persons were called to the bar of this House and examined. Thereupon,

Ordered, That the sergeant-at-arms of this House attach the bodies of Thomas Gilbert and Azarias Williams, and bring them forthwith to the bar of this House, to answer such charges as may be exhibited against them relative to the insults yesterday offered to this House. And,

Ordered, That the said sergeant do also summons William Cuyler and William Vandervoort to attend forthwith at the bar of this House, to be examined as witnesses relative to the facts mentioned in the preceding order.

THOMAS GILBERT ATTACHED.

The sergeant-at-arms reported that, pursuant to the order of the House, he had attached the body of Thomas Gilbert, and had him now in his custody.

The said Thomas Gilbert was set to the bar of this House, and the charge against him was read to him by the Speaker, and is in the words following, to wit:

"You, Thomas Gilbert, are charged, under oath, of having been guilty of a violent and indecent outrage upon the privileges of this House, by huzzaing and making other disturbances in the bar of the same, on the 9th instant."

Are you guilty or not guilty of the charge exhibited against you?

The Prisoner pleaded thereto, that *he was guilty*, and added that it proceeded from the impulse of the moment, without reflection or any

intention to insult the dignity or disturb the proceedings of this House, and declared that, from the moment he committed this act to the present time, he had been extremely sorry for his conduct.

THOMAS GILBERT DISCHARGED.

Resolved, That Thomas Gilbert having confessed that he made a disturbance in the bar of this House on the 9th instant by huzzaing, and the said Thomas Gilbert having acknowledged that his conduct was improper, and that he was extremely sorry for it,

Resolved, further, That the said acknowledgment is satisfactory to the House, and that the said Thomas Gilbert, upon paying the sergeant's fees, be discharged.

THE GOVERNOR REQUESTED TO ISSUE HIS PROCLAMATION, COMMANDING THE ARREST OF THOSE WHO DISTURBED THE ASSEMBLY.

The House then entered into the following resolution:

Whereas, The deliberations of this House were interrupted by the tumultuous shouts and clamors of the people within the bar of the same, on the 9th day of March, instant.

And, whereas, An attempt to control the proceedings of the representatives of this State by any particular set of men, is a violation of all order, and would tend to the destruction of a free and equal government, if the same were tolerated, inasmuch as it would render the great body of the people of this State subject to the passions which might influence the conduct of individuals in a particular part of it.

And, whereas, The people of this State have received an outrageous insult through the medium of their representations from the aforesaid persons, which insult ought not to remain unpunished. Therefore,

Resolved (if the Honorable, the Senate, concur herein), That his Excellency, the Governor, be requested to issue his Proclamation, commanding all magistrates and other officers of this State, to make every exertion for the apprehending of any person or persons guilty of the above offense, and to take such other legal steps as he may think necessary to bring all persons offending in the premises to condign punishment, to the end, that the representatives of the people, when deliberating for the public good, may not in the future be exposed to interruption and insult.

Ordered, That Mr. Vandervoort and Mr. Watson deliver a copy of the preceding resolution to the Honorable the Senate, and request their concurrence.

AZARIAS WILLIAMS ATTACHED AND BROUGHT TO THE BAR OF THE HOUSE.

The sergeant-at-arms reported, that pursuant to the order of the House, he had attached the body of Azarias Williams and had him now in custody.

The said Azarias Williams was let to the bar of this House and the charge against him was read, and is in the words following, viz.:

Information having been given under oath to this House, that you, Azarias Williams, did, on the ninth instant, at the bar of the same, while the House was deliberating in open session, on the conduct of William Kettletas, indecently and tumultuously disturb their said deliberations, insult the dignity thereof, by crying aloud at the bar thereof, and by endeavoring to excite a tumult in the same, in advising and promoting the giving of three cheers or huzzas, which were accordingly vociferated in said bar; which conduct was a high misdemeanor and insult upon the sovereignty of the people of this State. You are therefore charged with the same.

Are you *guilty* or *not guilty* of the charge exhibited against you?

The prisoner pleaded thereto, that he was not guilty; and prayed that he might be allowed counsel on his defense.

PRISONER ALLOWED COUNSEL.

Ordered, That the prisoner be allowed counsel on his defense, and that he may be permitted to retire from the bar in the custody of the sergeant-at-arms to procure the same. And being returned to the bar, the House proceeded to the examination of the witnesses against the prisoner, and William Cuyler and William Vandervoort were examined as witnesses against the prisoner, and were also cross-examined by the prisoner's counsel, and his counsel was fully heard in his defense. Thereupon,

Ordered, That the prisoner be removed from the bar by the sergeant-at-arms, and remain in his custody until the further order of the House. Thereupon,

Resolved, That Azarias Williams is guilty of the several charges exhibited against him by this House, the same having been substantiated by the testimony of witnesses.

Ordered, That the said Azarias Williams be again brought to the bar of this House, and, upon his asking the pardon of the House for the offense whereof he now stands convicted, and paying the fees of the sergeant-at-arms, he be discharged from custody.

The prisoner being again brought to the bar of the House, and the preceding resolution having been read to him, he answered: "I can

only say, as I have before declared, that I did not intend to insult the dignity of this House, and that I am sorry for what I did."

The prisoner was thereupon informed that his confession did not meet the terms of the resolution of this House. The prisoner answered: "I have nothing further to say." Thereupon,

Ordered, That the prisoner be removed from the bar by the sergeant-at-arms, and remain in his custody until the further order of the House.

AZARIAS WILLIAMS ORDERED IMPRISONED.

Thereupon, *Resolved, nemine contradicente*, That the sergeant-at-arms take the said Azarias Williams from the bar of this House and deliver him to the keeper of the jail of the city and county of New York; that the said Azarias Williams be imprisoned in the jail of the said city and county until the further order of this House, and that the Speaker do issue his warrant accordingly.

Ordered, That the said Azarias Williams be again brought to the bar of this House, and that the preceding resolution be read to him.

MR. WILLIAMS ASKS THE PARDON OF THIS HOUSE.

The prisoner being again brought to the bar, the preceding resolution for his commitment was read to him by the Speaker and a warrant for his commitment delivered to the sergeant-at-arms. Thereupon,

The prisoner declared that he was ready to comply with the resolution of this House specifying that upon his asking the pardon of this House and paying the sergeant's fees he should be discharged. And he did ask the pardon of this House accordingly. Thereupon,

Resolved, That the said Azarias Williams be discharged on paying the sergeant's fees.

Assembly Journal, 1796, pp. 124, 125, 126.

HON. WILLIAM NORTH, SPEAKER OF LAST HOUSE.—COMMUNICATION FROM, AS TO IMPRISONMENT OF WILLIAM KETTLETAS.

ASSEMBLY CHAMBER, NEW YORK CITY,
January 19th, 1797.

A communication of William North, Esq., late Speaker of the House of Assembly, was read, and is in the words following, viz.:

To the Honorable the Legislature of the State of New York:

The undersigned respectfully represents, that during the last session he had the honor of being Speaker of the Honorable the House

of Assembly; that on the 22d day of February and on the 5th day of March, 1796, certain publications under the signature of William Kettletas appeared in a newspaper printed in the city of New York, which publications were by the House adjudged to be highly injurious to that branch of the Legislature, and that the said Kettletas was guilty of a misdemeanor and contempt of the authority of the House; that for this offense the said Kettletas was, by unanimous resolution, committed to the jail of the city and county of New York, on the warrant of the Speaker; that in consequence of this commitment, the said Kettletas has instituted a suit and filed a declaration against the undersigned, which suit is now depending in the Supreme Court of this State. Conscious of the propriety of the act, and secure in the well-founded belief that the courts of justice, should they be clothed with power to judge in a case of this high nature, can never abet an attempt to intrench on the privileges of the representatives of the people, and that an impartial jury will not hold the man guiltless who, by false statements or false colorings, should endeavor to bring into question the integrity of those in whom the people do, and of right to, confide, the undersigned can feel no anxiety respecting the event. A sense of duty alone has induced this representation, which is respectfully submitted.

WILLIAM NORTH.

January 16*th*, 1797.

Mr. D. Ten Broeck gave notice that he would to-morrow move for a concurrent resolution, with a recital in the words following, viz.:

Whereas, It is represented to this Legislature by a communication from William North, Esq., late Speaker of the Honorable House of Assembly, that during the last session of the Legislature a certain William Kettletas, for certain offenses highly injurious to the honor and dignity of the Honorable the House of Assembly of the people of the State of New York, was, by unanimous resolution of the Assembly, for said offenses, committed to the jail of the city and county of New York, on the warrant of the Speaker; that in consequence of this commitment the said Kettletas has instituted a suit and filed a declaration against the said William North, Esq., which suit is now depending in the Supreme Court of this State; and forasmuch as the privileges of the representatives of the people ought to be and remain inviolate and without encroachment, and the honor and dignity of the House supported and maintained; therefore,

Resolved (if the Honorable the Senate concur therein), That the Attorney-General of this State be, and he is hereby directed and

required, to defend the said suit commenced by William Kettletas against William North, Esq., late Speaker of the Honorable the House of Assembly; and that his Excellency, the Governor, be requested, and he is hereby authorized, to employ further counsel for the purpose aforesaid, if, in his judgment, it shall seem requisite, and that the Legislature will make adequate provision for all necessary expenses and costs in the premises.

Assembly Journal, pages 59, 60.

ATTORNEY-GENERAL DIRECTED TO DEFEND SUIT OF WILLIAM KETTLETAS AGAINST WILLIAM NORTH, LATE SPEAKER.

IN ASSEMBLY, *January* 20, 1797.

Mr. D. Ten Broeck, according to notice by him for that purpose, given yesterday, made a motion that the House would agree to a resolution with a recital in the words following, viz.:

Whereas, It is represented to this Legislature, by a communication from William North, Esq., late Speaker of the Honorable House of Assembly, that during the last session of the Legislature a certain William Kettletas, for certain offenses highly injurious to the honor and dignity of the Honorable the House of Assembly of the people of the State of New York, was by unanimous resolution of the said House of Assembly for said offenses, committed to the jail of the city and county of New York on the warrant of the Speaker; that in consequence of this commitment, the said William Kettletas has instituted a suit and filed a declaration against the said William North, Esq., which suit is now depending in the Supreme Court of this State, and forasmuch as the privileges of the representatives of the people ought to be and remain inviolate and without encroachment, and the honor and dignity of the House supported and maintained, therefore,

Resolved (if the Senate concur herein), That the Attorney-General of this State be and he is hereby directed and required to defend the said suit commenced by William Kettletas against William North, Esq., late Speaker of the Honorable the House of Assembly. And that his Excellency the Governor be requested, and he is hereby authorized to employ further counsel for the purpose aforesaid, if in his judgment it shall seem requisite. And that the Legislature will make adequate provision for all necessary expenses and costs in the premises.

Debates were had thereon, and a motion was made to strike out that part of the said resolution authorizing his Excellency the Gov-

ernor to employ counsel which was carried in the affirmative. Mr. Speaker then put the question whether the House did agree to the resolution as amended, which was carried in the affirmative. Thereupon,

Resolved (if the Honorable the Senate concur herein), That the Attorney-General of this State be, and he is hereby directed and required to defend the said suit commenced by William Kettletas against William North, Esq., late speaker of the Honorable the House of Assembly, and that the Legislature will make adequate provision for all necessary expenses and costs in the premises.

Ordered, That Mr. De Witt and Mr. Foote deliver a copy of the preceding resolution to the Honorable the Senate, and request their concurrence.

Assembly Journal, 1797, pages 62–63.

ASSEMBLY CHAMBER, *January* 26, 1797.

Whereas, It appears by the Journal of this House, at the last session of the Legislature that William Kettletas was adjudged guilty of a misdemeanor and contempt of the authority of the House, and was for the said offense, by warrant of the Speaker, issued by order of the House, committed to the keeper of the jail of the city and county of New York. And, whereas, it is represented to this House by William North, Esq., Speaker thereof at the last session of the Legislature, that the said William Kettletas hath instituted a suit, and the same is now pending in the Supreme Court of judicature against him, the said William North, for his conduct in the premises as Speaker aforesaid. And it being essential to the liberties of the people that the privileges of the House should be preserved inviolate, and its constitutional authority and dignity uniformly supported. Therefore,

Resolved, That the Attorney-General of this State be, and he is hereby directed to defend the said suit, and to set forth in such manner as he shall deem most advisable the authority by virtue of which the said commitment was made, and that he communicate to this House the result of the said suit, and all necessary expenses which may have been incurred in the defense of the same.

Ordered, That the Clerk of this House transmit a copy of the preceding resolution to the Attorney-General.

Assembly Journal, 1797, page 72.

In the matter of the Breach of Privilege of Samuel Sherwood.

CHARGES OF CORRUPTION RELATIVE TO THE CHARTER OF THE MERCHANTS' BANK.—OFFER OF SHARES IN THE BANK FOR MEMBERS' VOTES.

ASSEMBLY CHAMBER, *March* 16*th*, 1805.

Two several certificates of John Ballard and Gurdon Huntington, Esqs.; a letter from Peter Betts, Esq., to William W. Gilbert, Esq.; an affidavit of George Merchant, Esq., and a letter from Anthony Marvine, Esq., addressed to his Honor the Speaker, were severally read, and are in the words following, to wit:

The subscriber being in conversation with a member of the Assembly on the subject of the Merchants' Bank, was told (seemingly as an inducement for the subscriber in favor of it), that those members who would vote in favor of giving the said bank a charter, would have the privilege of having some shares in the said bank, and that if they did not wish to fill up the said shares, some person would appear who would give them twenty-five per cent advance on the said shares; and further, the said member who mentioned this, was and still is, in favor of giving the said bank a charter.

JOHN BALLARD.

March 15, 1805.

The subscriber, while in conversation with a member of the Assembly on the subject of the Merchants' Bank, was told that those who would vote in favor of giving the said bank a charter, would have the privilege of having some shares in the said bank; and further, that the said member is in favor of the said bank.

GURDON HUNTINGTON.

March 15, 1805.

SIR.—As you mentioned in your place in the House of Assembly, that improper means were made use of to influence the members to vote for the Merchants' Bank now before the House, I will state to you a fact that happened to me. Some time after the meeting of the Legislature, and previous to the time that the bill for incorporating the Merchants' Bank was brought in the Assembly, a member of this House observed to me that if I would support that institution by my vote, I could have a number of shares, and that, if I was not disposed to keep them, I could sell them to a considerable advance; that as I was alphabetically near the first of the list of the Assembly, my

voting for that bill would be of use, as they wanted to give it a run in the first instance. I thought proper to give this information, and for you to make such use of it as you may deem expedient.

I am, sir, yours, etc.

PETER BETTS.

WILLIAM W. GILBERT, Esq.

ALBANY COUNTY, *ss:*

Personally appeared before me, George Merchant, Esq., of the city of Albany, and being duly sworn saith, that Mr. Marvine, a member of the House of Assembly, from the county of Delaware, told this deponent that he had been offered twenty-four shares in the Merchants' Bank, provided he would vote for the incorporation of said bank, and asked this deponent what he would have done in such a case; to which he replied, that he would conceive it his duty to expose the man who made the offer, or words to that effect. Mr. Marvine then observed that it was a particular friend who made the offer, and therefore, he thought he ought not to expose him, and further this deponent saith not.

GEORGE MERCHANT.

Sworn before me, this 15th day of March, 1805,

BENJAMIN WALLACE, Esq.,
One of the Justices of the Peace in and for the County of Albany.

ALBANY, *March 16th*, 1805.

The Honorable the Speaker:

SIR.—Being informed that Mr. George Merchant, of this city, had made an affidavit adverting to my conversation in relation to the bill now before the Legislature, for incorporating the Merchants' Bank, and which affidavit is intended to be brought before the honorable the House of Assembly for their consideration, I therefore think it proper to state that on Thursday evening last Mr. Merchant and myself were in conversation on the subject of the bank question, in the course of which I observed to him, in a hypothetical manner, as follows: Suppose a person was to offer you twenty-four shares in the Merchants' Bank, what would you do? He remarked, that he would expose the person; upon which I further observed: But suppose it was a particular friend of yours, and to which he added, he did not suppose that would alter his conduct, or words purporting similar ideas.

I further state that I have no knowledge of any further or different conversation with Mr. Merchant on this subject. I also add that no member of this House ever made any offer to me of a similar nature to the above, nor has the same been made by any agent for the bank; that during the time the subject has been agitated, I have had free conversation with several gentlemen out of the House, and from some of whom I have heard it observed that shares would be at the service of the friends of the bank if it succeeded.

ANTH. MARVINE.

Thereupon Mr. German made a motion that the House should agree to a resolution, with its recital in the words following, to wit:

Whereas, It appears to this House by the certificates of Gurdon Huntington, John Ballard and Peter Betts, members of this House, that they have respectively been offered shares to induce them to vote for the bill entitled "An act to incorporate the stockholders of the Merchants' Bank in the city of New York," and especially that the said John Ballard was offered twenty-five per cent advance on the shares so offered him if he did not wish to fill up the same; and whereas, the offer to any member of the Legislature of pecuniary inducements to influence his vote on a bill pending before them, is not only a breach of privilege and a high misdemeanor, but has an alarming tendency to destroy the freedom of opinion and to disgrace the legislative character. Therefore,

Resolved, That be a committee for the purpose of inquiring whether any, and what pecuniary or other improper rewards have been offered to any member of this House to induce him to vote in favor of the bill entitled "An act to incorporate the stockholders of the Merchants' Bank in the city of New York;" that the committee have power to send for persons and papers; that they have leave to sit during the session of this House, and that they report their proceedings to this House without delay.

Mr. Lush made a motion that the House should agree to a substitute, which, being read, is in the words following, to wit:

Whereas, It is suggested that certain undue and indirect means by surprise or otherwise have been adopted to obtain the incorporation of certain banks within this State, and whereas the dignity and independence of the Legislature are implicated in the said suggestions; be it therefore

Resolved (if the Honorable the Senate concur herein), That a joint committee of the Senate and Assembly be appointed for the

purpose of inquiring into the truth of those suggestions, and that they have power to send for persons and papers and to make such examinations as they may deem proper, and, in case of such concurrence, that be a committee on the part of this House.

Mr. Speaker decided that the said motion was not in order, and an appeal being made from the decision of the Chair, the same was confirmed by the House.

Mr. Lush then made a motion that the House should agree to receive a substitute which, being read, is in the words following, to wit:

Whereas, It is suggested to this House that certain undue and indirect means, by surprise or otherwise, have been adopted to obtain the incorporation of certain banks within this State,

And whereas, The dignity and independence of the Legislature are implicated in the said suggestions, be it, therefore,

Resolved, That a committee of this House be appointed for the purpose of inquiring into the truth of those suggestions, and that they have power to send for persons and papers, and to make such examinations as they may deem proper.

Debates were had thereon, and Mr. Speaker, having put the question whether the House would agree to the said motion, it was carried in the affirmative.

The ayes and nays being called for by Mr. Lush, seconded by Mr. Livingston, were as follows, to wit:

In the affirmative, 50. In the negative, 40.

Mr. Gilbert then made a motion that the House should agree to a recital to precede the recital moved by Mr. Lush, which, being read, is in the words following, to wit:

Whereas, It appears to this House, as well by the certificates as the declarations of several of the members thereof, that offers have been made by a member or members of this House, and by others to the said members, of certain shares in the Merchants' Bank in the city of New York, to induce the said members to vote in favor of a bill to incorporate the said bank; and, particularly, that John Ballard, one of the members of the House, had not only been offered a certain number of the said shares, but has also, in order that his vote might be secured in favor of the said bill, been promised twenty-five per cent on the nominal amount of the said shares, after said incorporating act should be passed.

And, whereas, Attempts to influence the votes of members of this House by the proffer of bribes, in the shape of money or other bene-

ficial rewards, are not only breaches of privilege and high misdemeanors, but have an alarming tendency to corrupt and prevent the opinions and votes of individual members, and to disgrace and destroy the purity of legislation, in open violation of the dearest and most invaluable interests of our constituents.

And the question having been put whether the House would agree to the same, it was carried in the affirmative.

Mr. Elmendorf then made a motion that the words,

"*And whereas*, It is suggested to this House by a member thereof, that undue and indirect means, by surprise or otherwise, have been adopted to obtain the incorporation of certain other banks within this State;"

"*And whereas*, The dignity and independence of the Legislature are implicated in the said suggestions,"

should both be expunged from the said recital.

Debates were had thereon, and Mr. Speaker having put the question whether the House would agree to the said motion, it passed in the negative.

The yeas and nays being called for by Mr. Elmendorf, seconded by Mr. W. Livingston, were as follows, to wit:

For the negative, 75. For the affirmative, 12.

COMMITTEE APPOINTED.

Thereupon the following resolution, with its recital, was agreed to by the House:

Whereas, It appears to this House, as well by the certificates as the declarations of several of the members thereof, that offers have been made by a member or members of this House, and by others to the said members, of certain shares in the Merchants' Bank in the city of New York, to induce the said members to vote in favor of a bill to incorporate the said bank; and, particularly, that John Ballard, one of the members of this House, hath not only been offered a certain number of the said shares, but has also, in order that his vote might be secured in favor of the said bill, been promised twenty-five per cent on the nominal amount of the said shares, after the said incorporating act should be passed; and,

Whereas, Attempts to influence the votes of members of this House by the proffer of bribes in the shape of money, or other beneficial rewards, are not only breaches of privilege and high misdemeanors, but have an alarming tendency to corrupt and pervert the opinions and votes of individual members, and to disgrace and destroy the

purity of legislation, in open violation of the dearest and most invaluable interests of our constituents; and,

Whereas, It is suggested to this House, by a member thereof, that certain undue and indirect means, by surprise or otherwise, have been adopted to obtain the incorporation of certain other banks within this State; and,

Whereas, The dignity and independence of the Legislature are implicated in the said suggestions. Be it therefore,

Resolved, That a committee of this House be appointed for the purpose of inquiring into the truth of those suggestions and charges, and that they have power to send for persons and papers, and all other power incidental and necessary to detect and bring to light the said offenses; and that they have leave to sit during the session of the House, and that they report their proceedings in the premises with all convenient speed; and that Mr. W. Gilbert, Mr. W. Livingston, Mr. German, Mr. Arcularius, Mr. McIntyre, Mr. Silvester and Mr. Lush form said committee.

Resolved, That the sergeant-at-arms attend the said committee, receive their orders and carry them into effect.

Assembly Journal, 1804–5, pages 223, 224, 225, 226, 227, 228.

ASSEMBLY CHAMBER, *March* 15, 1805.

Mr. W. Gilbert, from the committee appointed to investigate whether any and what improper means have been employed to obtain a charter for the Merchants' Bank, or any other banks within this State, asked leave to report.

LEAVE TO REPORT DENIED.

Debates were had whether the said committee should have leave to report, and Mr. Speaker having put the question, it passed in the negative.

For the negative, 51. For the affirmative, 35.

COMMITTEE INCREASED IN NUMBER.

Mr. Rockland then moved a resolution in the words following, to wit:

Resolved, That there be *five* members added to the committee appointed on Saturday last, of which Mr. Gilbert is chairman, and that such additional members be chosen by ballot.

(The number five was changed to six, and various other motions made and proceedings had, and the resolution as amended passed).

See Assembly Journal, 1804–5, pages 228, 229, 230.

The House then proceeded to choose, by ballot, the said committee, and after having taken and canvassed the ballots, it appeared that Mr. Van Ness, Mr. Barber, Mr. Crawford, Mr. Odell, Mr. Payne and Mr. Mann were duly chosen.

HOUSE AND GALLERY CLOSED.

On the suggestion of Mr. Gilbert that a motion he was ready to make would require secresy,

Resolved, That the gallery and House be cleared of all persons except the members and attendant officers.

Thereupon Mr. Doll rose in his place and made the following statement: That on Friday morning, the 15th inst., this deponent came to the room of Samuel Sherwood, at the house of Mr. Skinner, where after some conversation taking place between this deponent on the Merchants' Bank, the said Sherwood seemed to express some surprise on the deponent being in opposition to the said bank. That at that moment a member of the House came to the said room, where, after having some further conservation in presence of the said member, the said Sherwood by expression told the deponent that he said Sherwood supposed this deponent would lose his favorite object, a turnpike bill, in the Senate; that this deponent then answered, in some warmth, that he (this deponent) did not care anything about the said turnpike's passing; and that also the said deponent being a candidate for a judge in the county, the said Sherwood remarked that he rather supposed that my being in favor of the said bank would procure the said deponent the said appointment sooner than if he should be against it; that about this time the member present left the room, and then the said Sherwood commenced the conversation contained in the affidavit of this deponent, viz.: "That yesterday morning, between the hours of nine and ten, Samuel Sherwood, attorney-at-law, from the county of Delaware, offered him his horse, saddle and bridle, to go and see his sister, who lived out of town, and requested to know whether he would take twenty-four shares in the Merchants' Bank for that purpose, which he refused; that said Sherwood supposed the shares to be worth $200, and this deponent told him they were worth $300; that then the said deponent asked this deponent whether he would take $300 to go and see his sister; that he (the said Sherwood) then asked this deponent what he would take to vote in favor of the bank; that this deponent answered, evasively, nothing less than $1,000, $750 or $500, which by this deponent were considered at the time as expressions of no consequence, as this deponent had no idea

the same would be acceded to; that then afterwards this deponent, with said Sherwood, came on the second floor of said House, where said Sherwood again repeated the offers as stated in the affidavit, and that then this deponent took them to be intended as serious.

SAMUEL SHERWOOD ORDERED ARRESTED.

Mr. W. Gilbert made a motion that the House should agree to a resolution in the words following, to wit:

Resolved, That the Speaker of this House be requested and authorized to issue his warrant to the sergeant-at-arms to apprehend *Samuel Sherwood*, attorney-at-law, of the county of Delaware, and bring him before this House to-morrow morning at ten o'clock to answer to certain charges made against him, touching the privilege of a member of this House, and such other charges as may be alleged against him.

Mr. Kirkland then made a motion that a recital in the words following should precede the said resolution:

Whereas, A communication has been made to this House by Adam I. Doll, and also an affidavit by the said Adam has been presented to this House, in which communication and affidavit it is stated that Samuel Sherwood, attorney-at-law, of the county of Delaware, had attempted to influence in an improper manner the said Adam to vote for the Merchants' Bank; therefore,

Mr. Speaker put the question, whether the House would agree to the said resolution, with the recital, which was carried in the affirmative.

SECRECY ENJOINED.

Resolved, That secrecy be enjoined on every member of this House and its attending officers.

The House then adjourned until nine o'clock to-morrow morning.

March 19, 1805.

The House met pursuant to adjournment.

SAMUEL SHERWOOD APPREHENDED AND AT THE BAR OF THE HOUSE.

Mr. Speaker informed the House that the sergeant-at-arms had, pursuant to the warrant issued by him to apprehend the said Samuel Sherwood, an attorney-at-law, from the county of Delaware, apprehended the said Samuel Sherwood, and that he was attending at the bar of the House; thereupon,

Resolved, That the Speaker state the charges to the said Samuel Sherwood.

Mr. Speaker thereupon stated to the said Samuel Sherwood, that he was charged with using undue means to influence the vote of Adam I. Doll, a member of this House, in favor of the Merchants' Bank, and requested him to answer whether he was guilty or not guilty; to which the said Samuel answered,

NOT GUILTY.

Mr. Speaker then asked the said Samuel whether he was ready to proceed to answer the said charge; to which the said Samuel answered that he wished time to consult and prepare himself until to-morrow. Thereupon,

Resolved, That the said Samuel Sherwood be taken into custody by the sergeant-at-arms, who is authorized to take sufficient surety from the said Samuel for his appearance at the bar of this House to-morrow morning at ten o'clock.

Ordered, That the said Samuel Sherwood be furnished with a copy of the communication and affidavit by which he was charged.

Assembly Journal, 1804, 1805, pages 228 to 235 inclusive. See, also, pages 236 to 245.

ASSEMBLY CHAMBER, ALBANY, *March* 20, 1805.

AFFIDAVITS PRESENTED.

A communication from Henry Rutgers and William Few, addressed to his Honor the Speaker, was read in the words following, to wit:

ALBANY, *March* 20, 1805.

SIR.—We herewith inclose sundry affidavits, from which it will appear that a plan of corruption of the most injurious consequences has been premeditated and practiced, and the most unwarrantable measures have been adopted to carry the same into effect; and we are well assured that for this, evidence may be obtained to corroborate or confirm these facts.

We are, sir, your most obedient servants,

HENRY RUTGERS.
W. FEW.

The said affidavits being read,

Mr. German made a motion, that the said communication and affidavits should be referred to the committee of the whole House when on the bill entitled "An act to incorporate the Stockholders of the Merchant's Bank in the city of New York."

Mr. Van Ness then made a motion, that the House shall agree to a resolution with recitals, in the words following, to wit:

Whereas, It appears to this House that copies of certain affidavits taken before a committee of investigation, appointed by this House, have been made by some person without the authority of the said committee, which copies reflect upon the integrity and purity of certain members of this House;

And whereas, The said copies of the said examinations have this morning been handed to the Speaker, also without authority of the said committee;

And whereas, Such communications are highly improper, and are a breach of the privileges of the said committee appointed by this House as aforesaid, therefore,

Resolved, That the said copies be handed to the member or members who presented the same; and inasmuch as they came improperly before this House,

Resolved further, That the same shall not be entered upon the Journals of this House.

Debates were then had on the motion of Mr. German; and Mr. Speaker having put the question whether the House would agree thereto, it passed in the negative.

For the negative, 52. For the affirmative, 35.

Debates were then had on the said resolutions and recitals, and Mr. Speaker put the question whether the House would agree thereto; it was carried in the affirmative.

For the affirmative, 48. For the negative, 38.

Assembly Journal, 1805, pages 245, 246–7.

REPORT OF COMMITTEE.

ASSEMBLY CHAMBER, *March* 21, 1805.

Mr. W. Gilbert, from the committee appointed to investigate and develope whether any, and what improper means have been employed to obtain a charter for the Merchant's Bank, or any other banks within this State, reported the following statement of their proceedings, to wit:

STATE OF NEW YORK.

At a meeting of the committee appointed by the House of Assembly, this 16th day of March, 1805, for the purpose of investigating mal-conduct relative to certain banks mentioned in the resolution appointing the said committee.

Present—Mr. W. Gilbert, Chairman, Mr. W. Livingston, Mr. Arcularius, Mr. German, Mr. Silvester, Mr. McIntyre, Mr. Lush.

For testimony see Assembly Journal, 1804–5, pages 249, 250, 251, 252, 253, 254.

Mr. Gilbert further reported, that during the time which had elapsed since the appointment of the committee, they have been diligently employed in collecting the testimony contained in the foregoing statement, and that they shall proceed with all due diligence to complete the investigation.

See for further proceedings, Assembly Journal, 1805, pages 254, 255.

TRIAL OF SAMUEL SHERWOOD.

The House then proceeded to the trial of Samuel Sherwood, Esq., an attorney-at-law from the county of Delaware, on the charge of having made use of undue means to influence the vote of Adam I. Doll, a member of this House, in favor of the Merchants' Bank in the city of New York, and after an examination of the witnesses called in support of the charge, and their cross-examination by Mr. Sherwood and his counsel, it was proposed by his counsel that Mr. Sherwood should read his own affidavit in relation to the charges exhibited against him.

Debates were had thereon, and the question having been taken whether the House would agree to the said proposition, it passed in the negative.

For the negative, 43. For the affirmative, 42.

FINAL ACTION AND VERDICT OF THE HOUSE.

Mr. Speaker then put the question:

Is Samuel Sherwood, the prisoner at the bar, guilty or not guilty?

And stated to the House that those gentlemen who considered Mr. Sherwood guilty, would answer in the affirmative, and those who considered him not guilty, would answer in the negative.

Thereupon the ayes and nays being called, were as follows, to wit:

For the affirmative (names omitted), 15. For the negative (names omitted), 61.

SAMUEL SHERWOOD FOUND NOT GUILTY AND DISCHARGED.

Thereupon,

Resolved, That Samuel Sherwood is not guilty of the charge exhibited against him, and that he be and is hereby discharged.

Assembly Journal, 1805, pages 248 to 256 inclusive.

In the Matter of the Breach of Privilege of Daniel Rodman.

CHARGES THAT A MEMBER WAS BRIBED.

ASSEMBLY CHAMBER, IN THE CITY OF NEW YORK, *February* 8, 1810.

A letter from Abraham Van Vechten, Esq., a member of this House, addressed to his honor the Speaker, was read, and is in the words following, to wit:

February 8, 1810.

SIR.—I have the honor to inclose you an affidavit, which shows that a serious charge is made against one of the justices of the Honorable the Supreme Court, and against me as a member of this House.

I submit to the consideration of the House whether any, and if any, what means should be taken in order to a speedy and thorough investigation of the origin and foundation of that charge. I have the honor to be, with great respect,

Your obedient servant,

ABRAHAM VAN VECHTEN.

The Honorable WILLIAM NORTH,
Speaker of the House of Assembly.

CHARGES.

CITY AND COUNTY OF ALBANY, *ss:*

Ira Day, a member of the Legislature of the State of New York, being duly sworn, says that on the 2d day of February instant, in the presence of this deponent and Isaac Van Lorn, Daniel Rodman, of the city of Albany, to the best of this deponent's recollection, did declare that Robert Williams (alluding to Robert Williams, then a member of the Council of Appointment from the middle district), was bribed, and then said: Suppose that one of the supreme judges and the new Attorney-General were the contracting parties, with Robert Williams, and suppose Judge Van Ness was door-keeper at the time, and that there was a man secreted in a closet who heard the contract; and suppose we produce a small piece of paper in the handwriting of one of the judges, stating a part of the contract. What, said Mr. Rodman, will you think of all that? And the said Daniel Rodman

declared that all the above facts would be brought out before the next election.

IRA DAY.

Sworn to before me this 8th day of February, 1810.

RICHARD S. TREAT,
One of the Judges of the Court of Common Pleas for the county of Albany.

Thereupon the House came to the following resolutions, with the recitals, to wit:

COMMITTEE OF INVESTIGATION APPOINTED.

Whereas, It appears to this House by the affidavit of Ira Day, Esq., a member thereof, that Daniel Rodman, the former clerk of this House, has in substance declared and published that the Hon. Robert Williams, now a member of the Council of Appointment of this State, had been bribed, and that the Hon. William W. Van Ness, Esq., and Abraham Van Vechten, Esq., the latter a member of this House, was one of the contracting parties;

And whereas, The dignity and independence of this House, as well as of the honorable the Senate, are implicated in these transactions;

And whereas, It is of the utmost importance to the people of this State that if any such practices have existed they should be detected, exposed and punished, and if they do not exist that the caluminators or caluminator should be exposed and censured, and the persons or bodies implicated be cleansed from all suspicions; therefore,

Resolved, That a committee of this House be appointed for the purpose of inquiring into the truth of those declarations and charges, and that they have power to send for persons and papers, and all other powers incidental and necessary to bring to light the said offenses; and that they have leave to sit during the session of the House; and that they report their proceedings in the premises with all convenient speed; and that Mr. Cady, Mr. Mitchell, Mr. Grosvenor, Mr. Skinner and Mr. French be the said committee.

Resolved, That the sergeant-at-arms do attend the said committee, receive their orders, and carry them into effect.

Assembly Journal, 1810, pp. 63, 64.

REPORT OF COMMITTEE.

ASSEMBLY CHAMBER, *February* 21, 1810.

Mr. Cady, from the committee to whom was referred the letter of the Attorney-General and the affidavit of Ira Day, Esq., reported

that they have, in obedience to the resolutions of this House, proceeded to make diligent inquiry respecting the subjects mentioned in the resolutions appointing them.

The committee from the said resolutions understood that the objects for which they were appointed were two: 1st. To ascertain whether Daniel Rodman, former clerk of the House of Assembly, had made the declarations stated in the said resolution; and, 2d. Whether these declarations were founded in truth.

As to the first branch of the inquiry, the committee state that they have examined Ira Day, Esq., a member of this House, and Isaac Van Loan, Esq., on oath, who concur in proving, as by their depositions hereto annexed will appear, that the said Daniel Rodman did, on the second day of February instant, make declarations which can be understood in no other sense than as charging the Hon. Robert Williams with having been bribed, and charging the Hon. William W. Van Ness, Esq., and the Attorney-General of the State, a member of this House, as agents and parties in bribing the said Robert Williams.

For the purpose of ascertaining whether those declarations were warranted by facts, the committee summoned before them, and examined upon oath, the said Daniel Rodman, who was unable to state any fact or circumstance warranting the declarations which he had made; that the said Daniel Rodman, as appears from his deposition hereto annexed, represents his declarations to have been materially different from those sworn to by the said Ira Day and Isaac Van Loan, and he expressly swears that he did not mention the name of the Attorney-General, Mr. Van Vechten, as connected with the corruption of Mr. Williams; nor did he intend to make the slightest imputation on him or the Hon. William W. Van Ness, Esq.; nor did he suppose that either Mr. Day or Mr. Van Loan would have understood him in earnest; but he considered his declarations as a fair retaliation for their calling Mr. Williams a republican.

Yet the said Daniel Rodman declared to the committee that he did, both at the time he made the declarations to Messrs. Day and Van Loan, and at the time of his examination, believe that the said Robert Williams had been corrupted.

As one ground of such belief, he declared that during the last summer and fall he had received, by way of loan, large sums of money in New York, and particularly from Egbert Benson, Esq.

The committee have examined the said Egbert Benson, Esq., on oath, from whose deposition, herewith submitted, it appears that the

only moneyed transaction between him and the said Robert Williams originated in the year 1795; and that he knows of no fact calculated to show that the said Robert Williams has been bribed.

The said Daniel Rodman also stated, as further grounds of his belief, that a Mr. Storrs had declared to him that he had some knowledge of a contract made by Mr. Williams. He also said that he had been informed that Zebulon R. Shepard and James Warren had made declarations calculated to induce a belief that they were privy to or had some information upon the subjects of inquiry.

The said Daniel Rodman also stated that he had been informed that a Mr. Van Schoonhoven, at Waterford, had declared that they, the federalists, would purchase a member of the council, and that he would give one hundred dollars for that purpose.

The committee, anxious to discover if the belief of the said Daniel Rodman was founded on facts or circumstances, that would warrant even a suspicion that either of the gentlemen named in the resolution, had been guilty of the offenses charged upon them, have examined Zebulon R. Shepard, James Warren and Henry R. Storrs, upon oath, from whose depositions herewith submitted it appears that within the knowledge of these gentlemen, there is no fact or circumstances which can cast a shade of suspicion upon either of the gentlemen named in the resolution.

The committee have examined every person pointed out by the said Daniel Rodman, except Mr. Van Schoohoven. The committee did not deem it necessary to send for him in order to ascertain whether he had carried his threat into effect.

The committee finding nothing which implicated the Honorable William W. Van Ness or the Attorney-General, concluded it would be proper to examine them. On the request of the committee they appeared before the committee, were examined on oath, and from their depositions herewith submitted, it appears that neither of them know of any facts or circumstances calculated to prove or excite a suspicion that the said Robert Williams had been bribed by any one.

The said Robert Williams has delivered to the committee his affidavit, which is also submitted to the House with this report.

The committee willing to pursue the inquiry to every practicable extent, have in the course of the investigation, called before them several other persons, who as the committee were informed, had made declarations similar to those made by the said Daniel Rodman. The depositions of those persons are submitted with this report.

Upon the whole, the committee are of the opinion that the declara-

tions made by the said Daniel Rodman, as proved by the said Ira Day and Isaac Van Loan were false and caluminous, *and a breach of the privileges* of this branch of the Legislature, inasmuch as they charge one of its members with corruption.

That the committee are at the same time of opinion, that as the said Daniel Rodman has upon oath, declared that he did not intend to make the slightest imputations upon the Attorney-General, a member of this House, and as they have traced the charges to sources too contemptible to produce permanent injuries, either to this House or the gentlemen implicated, it will but comport with the dignity thereof, to take no further notice of the said declarations of the said Daniel Rodman, than as a mark of their disapprobation and censure of his conduct to pass a resolution, rescinding the resolution by which the said Daniel Rodman is permitted to come within the bar of this House. And the committee have directed their chairman to offer such resolution.

CITY AND COUNTY OF ALBANY, *ss:*

Ira Day, a member of the Legislature of the State of New York, being duly sworn, says, that on the second day of February, instant, in the presence of this deponent and Isaac Van Loan, Daniel Rodman of the city of Albany, to the best of this deponent's recollection, did declare that Robert Williams (alluding to Robert Williams of Poughkeepsie, then a member of the council of appointment from the middle District), was bribed; and then said, "Suppose that one of the supreme judges and the new Attorney-General were the contracting parties with Robert Williams, and suppose Judge Van Ness was door-keeper at the time, and at that time was a man secreted in a closet who had the contract, and suppose we produce a small piece of paper in the handwriting of one of the judges, stating a part of the contract," what, said Mr. Rodman, "will you think of that?" And the said Daniel Rodman declared that all the above facts would be made out before the next election.

IRA DAY.

Sworn to before me, this 8th day of February, 1810.

RICHARD S. TREAT,
One of the Judges of the Court of Common Pleas for the County of Albany.

February 9th, 1810.

Ira Day, a member of the House of Assembly, being summoned to attend, appeared accordingly, and after being sworn, to make true answers to such questions as should be put to him by the committee, relative to the objects mentioned in the resolutions appointing the committee, said, that on the second day of February, instant, at the house of Mr. Skinner, in this city, Daniel Rodman called at this deponent's room, and inquired for Colonel Haight; and after *stating* that some of the appointments, which had then recently been made, would injure the federal party, the said Daniel Rodman made use of the declarations stated in this deponent's affidavit, which has been submitted to the House of the Assembly. He thinks that Mr. Rodman left the room before Colonel Haight returned; that Mr. Rodman did not mention the time, when or place where he supposed Mr. Williams was bribed. That this deponent supposed Mr. Rodman made the said declarations seriously.

Sworn to before me, this 9th day of February, 1810.

RICHARD S. TREAT,
One of the Judges of the Court of Common Pleas for the County of Albany.

Mr. Daniel Rodman, having been summoned to attend, attended accordingly, and the chairman of the committee stated to Mr. Rodman that the object of the committee in requiring his attendance was to learn from him whether he knew of any fact calculating to show that the Hon. Robert Williams had been bribed through the agency of the Hon. William W. Van Ness, Esq., or Abraham Van Vechten, Esq., a member of this House.

Mr. Rodman declined answering any questions leading to such inquiry, unless he could be permitted to state the conversation which did pass between him and Mr. Day.

February 13, 1810.

Isaac Van Loan, Esq., of Catskill, in the county of Greene, being summoned to attend, appeared accordingly, and after having been sworn to make true answers to such questions as should be put to him by the committee relative to the objects mentioned in the resolution appointing the committee, said: "That on the second day of February instant, at the house of Mr. Skinner, in this city, this deponent and Ira Day, Esq., were above in one of the rooms of Mr. Skinner's house, when Daniel Rodman, Esq., came into the room and inquired

for Col. Haight, who then was absent, and that Mr. Rodman reprobated the appointments of the sheriffs of the counties of Columbia and Greene. This deponent then observed to Mr. Rodman that the appointments must be considered as republican appointments, as a majority of the Council were republicans. Mr. Rodman then said, to the best of this deponent's recollection, that Robert Williams was bribed. This deponent then said that he could not believe that Mr. Williams was bribed. Mr. Rodman replied, addressing this deponent, "what should you think if one of the judges of the Supreme Court was one of the parties; what should you think if the new State's Attorney was another of the contracting parties; what should you think if Judge Van Ness was door-keeper at such meeting; and what should you think, supposing we had a man secreted in a closet in that room, who heard the contract; and suppose we found a piece of paper in the room in the handwriting of one of the judges, or Judge Van Ness, which this deponent does not recollect, which proves a part of the contract? What should you think of all this," said Mr. Rodman?

This deponent replied that when it was proved he should put his own construction upon it.

The said Daniel Rodman then said it would all be made out before the next election. The declarations of the said Daniel Rodman were made with an apparent intention that they should be believed; that no persons were present except Ira Day, the said Daniel Rodman, and the deponent; and that the said Daniel Rodman did not mention the time when or the place where the said Robert Williams was bribed, or the manner in which it was effected.

ISAAC VAN LOAN.

Sworn this 13th day of Feb., 1810, before me.

RICHARD S. TREAT,
One of the Judges of the Court of Common Pleas for the County of Albany.

Peter Donnelly, being sworn, says he knows nothing respecting the subjects maintained in the said resolutions, except conversations which took place in bar-rooms.

Sworn to before me this 13th day of February, 1810.

RICHARD S. TREAT,
One of the Judges of the Court of Common Pleas for the County of Albany.

Jonathan Warren, being duly sworn, says, that he knows nothing respecting the subjects mentioned in the said resolution, nor has he ever accused either of the gentlemen mentioned in the resolution with being bribed or bribing others.

Sworn to before me this 13th day of February, 1810.

RICHARD S. TREAT,
One of the Judges of the Court of Common Pleas for the County of Albany.

February 16, 1810.

Daniel Rodman, late clerk of the House of Assembly, being summoned to attend, appeared accordingly, and, after having been sworn to make true answers to such questions as should be put to him by the committee, relative to the object mentioned in the resolution appointing the committee, said:

That on the second day of February instant, this deponent called at the house of Mr. Skinner, for the purpose of calling on Col. Haight, and went into the room in which Ira Day, Esq., and Isaac Van Loan were; that, not finding Col. Haight, he left a card for him, and was about leaving the room when Mr. Ira Day asked him to sit down; he sat down, and after conversing some time respecting some recent removals and appointments, which this deponent told them would injure the federal party, Mr. Van Loan replied that he could not find fault with the conduct of the council, as they were republicans. He supposed that Mr. Van Loan was quizzing him, and therefore said he thought Robert Williams was corrupted; that, although his conversion appeared almost miraculous, he believed it was brought about by human agency; that our Ariel will come out before the next election and produce the contract. It was not for nothing that Judge Van Ness and Gilbert Stewart were patroling the street before Governor Platt's door the other evening. That either Mr. Day or Mr. Van Loan replied, that he could not believe that a republican could be bought. This deponent replied that Mr. Purdy was a memorable instance of what could be done. That this deponent did not mention the name of the Attorney-General, Mr. Van Vechten, as connected with the corruption of Mr. Williams, nor did he intend to make the slightest imputation on him or the Hon. William W. Van Ness; nor did he suppose that either Mr. Day or Mr. Van Loan would have understood him in earnest; but he considered his

declaration as a fair retaliation for thus calling Mr. Williams a republican.

Sworn to before me this 16th day of February, 1810.

RICHARD S. TREAT,
One of the Judges of the Court of Common Pleas of the County of Albany.

February 17, 1810.

ALBANY, *ss:*

Henry R. Storrs being duly sworn, saith: That in this city he has had conversation with Daniel Rodman, respecting certain charges of bribery made by said Rodman against William W. Van Ness, Esq., and Abraham Van Vechten, Esq. This deponent saith that in said conversation, Daniel Rodman did intimate that he had made such charge against the above gentlemen; and this deponent did thereupon reply to said Rodman, that it was not true that said gentlemen or either of them had been guilty of the same, and that this deponent did further say, that he had been informed to his entire satisfaction, that the arrangement entered into by Robert Williams, Esq., if any ever was, was without the means or concern of those gentlemen. This deponent further saith: That he does not expressly deny that he, by the above, alluded, or intended to allude to or declare, in any manner insinuate that any corrupt or improper arrangement had been made by any person whatever, with Mr. Williams or by any improper means; and that all pretenses that this deponent did so are false and unfounded. And that this deponent hath no knowledge of or any belief that such alleged charges are true, and does believe them to be false throughout.

HENRY R. STORRS.

Sworn to before me, this 17th day of February, 1810.

RICHARD S. TREAT,
One of the Judges of the Court of Common Pleas for the County of Albany.

February 19, 1810.

ALBANY COUNTY, *ss:*

Zebulon R. Shepherd, being summoned to appear, appeared accordingly, and after being duly sworn to answer such questions as should be put to him by the committee, relating to the subject mentioned in the resolution, said that he came to the city of Albany on the fourth

day of February instant; that on his way, at Salem in the county of Washington, he was informed who were chosen members of the Council of Appointment, that he had not before then heard that Mr. Robert Williams was to be a member of the council; that he had never said or intimated, that the said Robert Williams was corrupted, nor does he know of any fact calculated to excite a suspicion of that kind.

ZEBULON R. SHEPHERD.

Sworn to before me, this 19th day of February, 1810.

RICHARD S. TREAT,
One of the Judges of the Court of Common Pleas for the County of Albany.

ALBANY COUNTY, *ss:*

James Warren, of the city of Albany, merchant, having been summoned, appeared before the committee, and, after being duly sworn to make true answers to such questions as should be put to him respecting the subjects mentioned in the resolution appointing the committee, said that he knows of no fact or circumstance calculated to prove, or excite a suspicion, that the Hon. Robert Williams was bribed; that he never spoke to the said Robert Williams in his life.

JAMES WARREN.

Sworn to before me this 19th of February, 1810.

RICHARD S. TREAT,
One of the Judges of the Court of Common Pleas for the County of Albany.

ALBANY COUNTY, *ss:*

Egbert Benson, of the city of New York, being summoned to appear, appeared accordingly; and, after being duly sworn to make true answers to such questions as should be put to him by the committee, said: That in the year 1795 he sold to Robert Williams, now a member of the Council of Appointment, a quantity of materials which he had collected at Poughkeepsie for building a house, but which, being about to remove to New York, he disposed of, and for which the said Robert Williams gave him two bonds, one for one hundred and fifty pounds, and the other for one hundred and five pounds, and which bonds he still holds, the said Robert Williams having constantly since annually paid the interest; that whence it was that the said Robert Williams gave the deponent two bonds for

the several sums above mentioned, instead of one bond for the whole amount, he does not recollect; and that this is the only moneyed transaction, except purchasing one horse of him in the preceding summer, he ever had with the said Robert Williams, to the best of his knowledge or recollection; and he further saith that he does not know of the said Robert Williams having received any sum of money during the last summer or fall or the present winter, nor does he know of any fact calculated to show that the said Robert Williams has been bribed.

EGBERT BENSON.

Sworn to before me this 19th day of February, 1810.

RICHARD S. TREAT,
One of the Judges of the Court of Common Pleas for the County of Albany.

ALBANY COUNTY, *ss:*

William W. Van Ness, Esq., one of the judges of the Supreme Court, attended before the committee in pursuance of their request, and after being duly sworn to answer such questions as should be put to him, in relation to the subject mentioned in the resolution appointing the committee, said, that he knows of no fact or circumstance which is calculated to prove or excite suspicion that the Honorable Robert Williams was bribed; nor has he been with Gilbert Stewart, to his recollection, in the street before the door of Mr. McClallen's in this city.

W. W. VAN NESS.

Sworn to before me, this 19th February, 1810.

RICHARD S. TREAT,
One of the Judges of the Court of Common Pleas for the County of Albany.

ALBANY COUNTY, *ss:*

Abraham Van Vechten, Esq., Attorney-General, appeared before the committee in pursuance of their request, and after being duly sworn to answer such questions as should be put to him in relation to the subject mentioned in the resolution appointing the committee, said, that he knows of no fact or circumstance calculated to excite suspicion that the Honorable Robert Williams had been bribed; that he had no communication with the said Robert Williams respecting his election as a member of the Council of Appointment, nor did he see the said Robert Williams since the close of the last session of the

Legislature, until he was chosen as a member of the council at the present session of the Legislature.

AB. VAN VECHTEN.

Sworn to before me, this 19th of February, 1810.

RICHARD S. TREAT,
One of the Judges of the Court of Common Pleas for the County of Albany.

ALBANY COUNTY, *ss:*

I, Robert Williams, do solemnly swear, that I have had no communication whatever, verbal or written, with Abraham Van Vechten, Esq., since the rising of the Legislature in 1809, until after I was chosen a member of the present Council of Appointment, nor have I, within the same period of time, had any communication, verbal or written, with the Honorable W. W. Van Ness, one of the judges of the Supreme Court, except that I once accidentally met him in Eagle Tavern of this city, on the first day of the present session of the Legislature, and then exchanged the ordinary civilities with him and no more. And I do further declare that my conduct and votes, as a member of the Council of Appointment, have not been the effects of any preconcert, previous arrangement, understanding or agreement with any person or persons whatever, but have been dictated solely by a sense of public duty, and with a view to put down what I conceived to be, a monopolizing mercenary family influence, too long predominant in this State.

ROBERT WILLIAMS.

Sworn to before me, this 20th day of February, 1810.

RICHARD S. TREAT,
One of the Judges of the Court of Common Pleas.

Thereupon,

Ordered, That the consideration of the said report be postponed.

Ordered, That the usual number of copies of the said report be printed for the use of this House.

Assembly Journal, 1810, pages 108 to 114.

IN ASSEMBLY, *February* 26, 1810.

The House proceeded to take into consideration the report of the committee to whom was referred the letter of the Attorney-General, and the affidavit of Ira Day, Esq., as entered on the journal of this House of Wednesday last; thereupon,

Resolved, That this House do agree with the committee in their said report; whereupon,

Resolved (unanimously), That the resolution which passed this House on the second day of February instant, permitting Daniel Rodman, former clerk of this House, at all times to come within the bar thereof, be and the same is hereby rescinded, and that the said Daniel Rodman shall at no time hereafter be permitted to come within the bar of this House.

Assembly Journal, 1810, page 138.

IN ASSEMBLY, *February* 27, 1810.

Mr. Grosvenor made a motion that the House should agree to a resolution, which was read, and is in the words following, to wit:

Resolved, That the printer to this State be, and he is hereby directed and required to cause to be published in the State paper, called the Albany Register, without delay, the resolution appointing the committee to examine into the several charges made by Daniel Rodman against the Honorable Judge Van Ness, the Attorney-General of this State, and the Hon. Robert Williams, the report of said committee, the documents and affidavits accompanying the said report, and the resolution founded thereon.

Ordered, That the consideration of the said resolution be postponed until to-morrow.

Assembly Journal, 1810, page 147.

IN ASSEMBLY, *February* 28, 1810.

The House proceeded to take into consideration the resolution proposed yesterday by the motion of Mr. Grosvenor; the same having been read, is in the words following, to wit:

Resolved, That the printer to this State be, and he is hereby directed and required to cause to be published in the State paper, called the Albany Register, without delay, the resolution appointing the committee to examine into the several charges made by Daniel Rodman, against the Hon. Judge Van Ness, the Attorney-General of this State, and the Hon. Robert Williams, the report of the said committee, the documents and affidavits accompanying the said report, and the resolution founded thereon.

Debates having been had thereon, Mr. Speaker put the question, whether the House would agree to the said resolution, and it was carried in the affirmative.

Ordered, That the clerk deliver a copy of the said preceding resolution to the State printer.

Assembly Journal, 1810, pages 156, 157.

In the Matter of the Contempt of

NICHOLAS GARDENIER, CHARGED WITH FORGING CERTIFICATE FOR CLAIM.

ASSEMBLY CHAMBER, *February* 6, 1812.

The petition of Nicholas Gardenier, praying compensation for his services during the late revolutionary war, was read, and, together with the documents accompanying the same, referred to a select committee, consisting of Mr. Van Rensselaer, Mr. Hayes, and Mr. Livingston.

Assembly Journal, 1812, page 53.

REPORT OF COMMITTEE.

ASSEMBLY CHAMBER, *February* 20*th*, 1812.

Mr. Van Rensselaer, from the committee to whom was referred the petition of Nicholas Gardenier, and the documents accompanying the same, reported as follows, to wit:

That on investigating the claim of the petitioner, they find a paper purporting to have been signed by Philip Schuyler and Volkert P. Douw, commissioners for Indian affairs, certifying the sum of seventy-two pounds to be due to the said Nicholas Gardenier, which certificate, in the opinion of your committee, and in the knowledge of their chairman, is not signed by the said Philip and Volkert; your committee, therefore, are of the opinion that the prayer of the petitioner ought not to be granted; and your committee are further of opinion that public justice requires that the said Nicholas Gardenier be brought to the bar of this House, to be examined touching the said pretended certificate, and the contempt of the dignity of this House, and have directed their chairman to move the following resolution:

Resolved, That the Honorable the Speaker of this House be requested to issue his warrant, directed to the sergeant-at-arms, requiring him to take the body of Nicholas Gardenier, of the town of Charlestown, in the county of Montgomery, and to bring him to the bar of this House, to answer for an alleged contempt against this House.

Ordered, That the consideration of the said report and resolution be postponed until to-morrow.

Assembly Journal, 1812, page 148.

ARREST OF NICHOLAS GARDENIER ORDERED.

ASSEMBLY CHAMBER, *February 26th*, 1812.

The House then took into consideration the report of the committee to whom was referred the petition of Nicholas Gardenier, and the documents accompanying the same; the said Nicholas Gardenier then attending at the bar of the House.

TESTIMONY OF J. R. VAN RENSSELAER.

Whereupon Jacob Rutsen Van Rensselaer, Esq., one of the members of this House, having been duly sworn, was examined as follows, touching the allegations contained in the report:

Question 1st. Do you know the handwriting of Philip Schuyler and Volkert P. Douw? Answer. I do.

Question 2d. Are the names subscribed to the paper exhibited, the handwriting of either of the above gentlemen? Answer. I am intimately acquainted with the handwriting of Philip Schuyler having frequently seen him write for many years previous to his death, and am fully persuaded that the signature in question is not in his handwriting. I am also acquainted with the handwriting of Volkert P. Douw, though not as intimately as with the other, and entertain no doubt that his name is also counterfeited.

Question 3d. Was the paper presented to the committee as an original voucher? Answer. It accompanied the petition of Nicholas Gardenier and the other papers, purporting to be original vouchers in support of his application. Thereupon,

Ordered, That the said Nicholas Gardenier be taken into custody by the sergeant-at-arms, who is authorized to take sufficient surety from the said Nicholas for his appearance at the bar of this House to-morrow morning at ten o'clock.

Assembly Journal, 1812, page 166.

February 27, 1812.

COUNSEL ATTENDED.

The House then proceeded to an examination with the case of Nicholas Gardenier, who, together with his counsel then attended at the bar of the House.

Mr. Speaker thereupon showed and presented to the said Nicholas

Gardenier, the paper containing the certificate alleged to have been forged, and put to him the following questions, to wit:

"Did you or did you not exhibit the paper now shown to you, and particularly the certificate therein, purporting to have been signed by Philip Schuyler and Volkert P. Douw, and cause the same to be exhibited to this House as an original and genuine document?

To which question the said Nicholas Gardenier answered in writing as follows, to wit: "I did present to this House the paper referred to, believing it to be original and genuine, because I found it amongst the papers of my deceased father, and was unacquainted with the handwriting of General Schuyler and Mr. Douw, whose names are subscribed thereto, and because I had myself performed the services therein mentioned, while under the direction of my father."

Mr. Speaker then stated to the House that the said certificate was received by him from the prisoner at the bar, together with his petition and the other documents accompanying the same, to be by him presented to the House; that he had handed the said petition and documents to one of his colleagues, from whom he again received them, and presented them to the House in the ordinary way of presenting petitions.

The prisoner at the bar then admitted that the said certificate was not an original document, as it purported to be, and requested permission to be examined on oath on interrogations touching the contempt with which he stands charged by this House.

Thereupon, on motion of Mr. Van Vechten,

Resolved, That the committee appointed by this House to conduct the examination into the case of Nicholas Gardenier, the prisoner at the bar, be requested to prepare interrogations to be administered to the said Nicholas Gardenier, touching the contempt with which he stands charged by this House, and that such interrogations be reported to the House without delay for approbation.

INTERROGATORIES PROPOSED.

Whereupon Mr. Radcliff, in behalf of the said committee, reported that the committee had prepared certain interrogatories to be administered to the prisoner at the bar, which, being read, were approved by the House, and are as follows, to wit:

1st. Did you present to the House the paper you hold in your hand, verily believing the same to be an original paper?

2d. Did you at that time believe the names of Philip Schuyler and Volkert P. Douw, which appear subscribed to the certificate, on the

said paper written, to be the true and genuine handwriting of Philip Schuyler and Volkert P. Douw?

3d. Is the name of Nicholas Gardenier, at the bottom of the writing, purporting to be an affidavit made before Elias Palmer, Jr., your handwriting; if not, whose handwriting is the same?

4th. Is the name of Elias Palmer, Jr., on the back of the said paper, the handwriting of the said Elias Palmer, Jr.; if not, whose handwriting is the same?

5th. Did you take before the said Elias Palmer, Jr., the oath purporting to have been by you taken on the back of the said paper?

6th. How came you in the possession of the said paper, and what induced you to present the same to this House?

7th. Is your father dead; and if so, when and where did he die?

8th. Is the whole of the writing on the paper in question your handwriting; if not, what part thereof is so?

The prisoner at the bar then asked for time until to-morrow to prepare his answers to the said interrogatories, which being granted by the House, it was thereupon

Ordered, That said Nicholas Gardenier do remain in custody of the sergeant-at-arms, who is authorized to take surety from the said Nicholas in the sum of five hundred dollars for his appearance at the bar of this House to-morrow morning at ten o'clock.

Assembly Journal, 1812, pp. 175 and 176.

NICHOLAS GARDENIER AT THE BAR OF THE HOUSE.

February 29, 1812.

Pursuant to the order of the House of yesterday, Nicholas Gardenier, charged as being guilty of the authority and privileges of this House, appeared at the bar of the House.

The interrogatories, as entered on the Journal of this House of yesterday, having been read by the clerk to the said Nicholas Gardenier, he answered in writing as follows, to wit:

ANSWERS OF NICHOLAS GARDENIER.

"To the first interrogatory, Nicholas Gardenier answers, that he did present to the Honorable the House of Assembly, the paper in the said interrogatory mentioned, verily believing the same to be an original paper.

"To the second interrogatory he answers, that at the time of presenting the said paper, he did not nor has he at any previous time, within several years, particularly examined the said paper, but he did

then believe it was a genuine and original paper, and subscribed in the true and genuine handwriting of Philip Schuyler and Volkert P. Douw.

"To the third, fourth, fifth and eighth interrogatories, he answers that the whole of the said paper is in the proper handwriting of him, the said Nicholas Gardenier, and no part is the handwriting of the said Elias Palmer, and that he did take an oath before the said Elias Palmer of the same effect and to the same purport, with that indorsed on the said paper, but he particularly refers for an explanation to his answer to the sixth interrogatory.

"To the sixth and seventh interrogatories, he answers and says, that the said paper must have been long since copied by him, though when he does not recollect, and remained in the custody of his father until his death, which took place on or about the 9th of May, 1807. That by his father's will all his papers and accounts were devised and bequeathed to him, for his sole use and benefit; that on looking over his father's papers he found the paper referred to, and the documents which were presented to the House with this petition; that he has frequently seen the original paper, of which the same paper referred to is a copy, and although he does not know the signatures and handwriting of Philip Schuyler and Volkert P. Douw, yet from conversations with people acquainted with the transaction, he is perfectly satisfied that the said paper and certificate so copied by him, and of which the one referred to is a transcript, was genuine, and duly signed by said Schulyer and Douw, and that the services were performed by him while in his father's services for the public; and that no compensation has ever been made for them as he verily believes, and that he presented the same to the House for recompense, for meritorious services performed in the midst of a hostile country during the Revolutionary war, believing the papers to be honest, fair and genuine."

The said Nicholas Gardenier having testified to the truth of the several matters contained in his said answers, under the solemnities of an oath, administered to him by the Speaker for that purpose, and having been heard by counsel in his defense.

NICHOLAS GARDENIER DISCHARGED ON PAYMENT OF FEES OF SERGEANT-AT-ARMS.

Thereupon, on motion of Mr. Van Vechten, the House adopted the following resolutions and recitals, to wit:

Whereas, It appears by the answers of Nicholas Gardenier to the

interrogatories exhibited to him on the part of this House that the vouchers referred to in the said interrogatories were presented by him, believing them to be original and genuine, because he found them amongst the papers of his father, after his death;

And whereas, It further appears by the said answers that the said vouchers have since been discovered by the said Nicholas Gardenier to be mere copies made by himself about twenty years ago;

And whereas, The said Nicholas Gardenier, by his said answers, denies upon his oath every purpose of contempt of the privileges of this House. Therefore,

Resolved, That the said Nicholas Gardenier be discharged from the custody of the sergeant-at-arms upon payment of his fees, and that the said vouchers referred to in the said interrogatories, together with copies of the said interrogatories and answers, be delivered by the clerk to the Attorney-General, to the end that he may proceed thereon as in his opinion public justice shall require.

Assembly Journal, 1812, pp. 181, 182.

In the Matter of the Breach of Privilege of John Martin.

BRIBERY RELATIVE TO THE INCORPORATION OF THE BANK OF AMERICA.

ASSEMBLY CHAMBER, *March 13th*, 1812.

Mr. Ogden stated in his place that a member of this House, who was then also in his place, had informed him that he (the said member) had been offered by an agent in behalf of the Bank of America, five hundred dollars and a handsome present besides if he would vote for the bill incorporating the said bank. Thereupon,

Resolved, That the gallery and House be cleared of all persons, except members and officers of the House.

COMMITTEE APPOINTED.

Thereupon;

Resolved, That a committee be appointed to conduct an examination before this House into a charge made by certain members thereof, of an attempt by a certain person or persons to influence them in giving their votes upon an act to incorporate the stockholders of the Bank of America, and that Mr. Radcliff, Mr. Ross, Mr. Ogden, Mr. Grosvenor and Mr. Jones be the said committee.

Resolved, That all the examinations on the charge of improper

practices in relation to the incorporation of the Bank of America be on oath.

Resolved, That all the inquiries on the subject of improper practices in procuring the incorporation of the Bank of America be secret until otherwise ordered by this House.

The committee appointed to conduct the examination into the charge of improper practices in relation to the bill incorporating the stockholders of the Bank of America, then proceeded, in the presence of the House, to examine on oath Silas Holmes, Esq., a member of this House from the county of Chenango, and Nathaniel Cole, Esq., a member of this House from the county of Madison.

Resolved, That the Speaker issue his warrant to the sergeant-at-arms commanding him forthwith to apprehend John Martin, of Plainfield, in the county of Otsego, and to bring him before this House to answer for a contempt of the privileges of this House.

The committee appointed to conduct the examination into the charge of improper practices in relation to the bill incorporating the stockholders of the Bank of America, then further examined Nathaniel Cole, Esq., in the presence of the House; and in like manner proceeded to examine, on oath, Thomas Ludlow, Esq., a member of this House from the county of Cayuga; Bennett Bicknell, Esq., a member of this House from the county of Madison; Samuel Campbell, Esq., a member of this House from the county of Chenango; Oliver C. Comstock, Esq., a member of this House from the county of Seneca; and Denison Randall, Esq., a member of this House from the county of Chenango; and, after some time spent in such examination, it was, on motion,

Resolved, That the doors of this House be again opened.

Then the House adjourned until ten o'clock to-morrow morning.

GALLERY CLEARED.

SATURDAY, *March 14th*, 1812.

The House met pursuant to adjournment.

Resolved, That the gallery and House be cleared of all persons, except members and officers of the House.

The committee appointed to conduct the examination before this House into a charge of improper practices in relation to the bill incorporating the stockholders of the Bank of America, then proceeded, in the presence of the House, to examine, on oath, Thomas P. Grosvenor, Esq., a member of this House from the county of Columbia; Samuel Woodworth, Esq., a member of this House from the county

of Herkimer; Rudolph I. Shoemaker, Esq., a member of this House from the county of Herkimer, and Samuel H. Coon, Esq., a member of this House from the county of Madison; and, after some time spent in such examination, it was, on motion,

Resolved, That the doors of the House be again opened.

Then the House adjourned until five o'clock this afternoon.

Five o'clock, P. M.

Ordered, That the gallery and House be cleared of all persons, except members and officers of the House.

The committee appointed to conduct the examination into the charge of improper practices in relation to the bill incorporating the stockholders of the Bank of America, then examined, on oath, in the presence of the House, Isaac Ogden, Esq., a member of this House from the county of Delaware; and, after having gone through the same, the committee proceeded to compare their notes of the testimony, and read the same to the House, in presence of the persons examined, which testimony, as agreed to by the several deponents and the House, on such comparison and reading, is as follows, to wit:

Silas Holmes, Esq., being duly sworn, deposes and says:

That one John Martin, of the town of Plainfield, in the county of Oswego, as he understands, about a fortnight ago, in a conversation with the deponent, on the subject of banks, inquired of the deponent what he thought of the Bank of America; that said Martin declared himself favorable to that bank; but that the deponent gave no opinion on the subject. That a few days after this conversation, the said Martin had a second interview and conversation with the deponent, when he again asked the deponent's opinion of the bank, and told this deponent that if he was in its favor he might profit by it; that he (Martin), was authorized to offer the deponent four hundred dollars in shares, if he would vote for it, and the bill should pass; to which the deponent replied, that he wanted no shares, for that he had no money to pay for them; Martin said, that would be made easy; then he left the deponent, and told him to think of it; that shortly afterward Martin met him in the street, and taking him into an alley, again told him, that if he advocated the bank he should have five hundred dollars in stock, and that the payment therefor should be made easy to him; that the deponent refused to pledge himself in favor of the bill, and observed that the offers made to him by Martin, had the appearance of a bribe; that Martin then said no bribe was intended; that unless the deponent could see it right to vote for the

bank, he might vote as he pleased; but that if he could see it right to advocate the bank, then he might receive the five hundred dollars in shares; and that the same might be realized by the profits on the sales in June, when the bank would go into operation, or to that effect; that just before the vote on the first section of the bill was taken, the same offer of five hundred dollars was repeated by said Martin, to the deponent, with a further promise of a handsome present, and an assurance that the five hundred dollars should be secured to him by writing, before he left town, in case the deponent should give his vote for the bill, and the same should pass; that the deponent then said, that he did not like the thing and should vote against it, and returned to the House and gave his vote against it. The deponent further states, that he had mentioned the said conversation and offers of Martin, to Mr. Rockwell, of Saratoga; and that on Tuesday or Wednesday last, he was applied to by Mr. Cramer, who said that Mr. Rockwell had communicated the same to him, and wished to know whether the deponent would make affidavit thereto. The deponent said he would, if required. The deponent further says, that Martin was often at the deponent's lodgings; understood that he had been a school-master and a preacher, but was now too old to follow that business; understood from him that he was authorized by the *company* to make the offers he did; no individual was named by him as having given him such authority. That deponent asked said Martin whether he knew Post and Newbold; that Martin said that he did not know that he knew them. The deponent has seen him (Martin), talking with Mr. Randall, Mr. Cole, Mr. Bicknell and, also, he thinks, with Mr. Coon. That a few days after the first conversation with Martin, the deponent communicated the substance of that conversation to Mr. Comstock; and they conferred together about disclosing it to the House, and both agreed that it might be best to wait and see how it went on: meaning that they would wait to see whether any and what further evidence should appear, of similar attempts on others; that for a week past, conversations have been had about bringing the matter before the House; that he was a young member, and was unwilling to act in the business without advice; that he went this morning to Judge Spencer, to consult with him, as to the course proper for him to pursue; that he found Mr. Ogden there; and that this statement there made was the first communication made by him to Mr. Ogden on the subject; that he yesterday morning, before the House met, called on the Governor and communicated the same to him; that he understood that Martin left

Albany the day after the first section of the bill passed; that the offers made by him to the deponent were communicated to Mr. Comstock, and others of this House, before Martin left Albany; that the deponent was informed by Mr. Cole, that he had told Martin he had better leave town, or he might be sent down the river; that the deponent had not been tampered with, or had any offers made him, by any other person than Martin, to induce him to vote for or against the bank; has understood from Mr. Cole that he has received offers, and from Mr. Ludlow and Mr. Campbell; that they had been tampered with to vote for the bank.

Question by Mr. Comstock:

When you made to me the communication mentioned in your examination, did I not tell you that anything iniquitous ought to be disclosed? Answer. Yes.

Second question by Mr. Comstock:

Have I discovered any greater anxiety since than before the passage of the first section of the bill, on the subject of the disclosure of the attempts made to influence your vote? Answer. No.

Question by Mr. Douglass:

Who advised you to go to the Governor, and who went with you? Answer. Mr. Cole advised it and went with me; the Governor advised that it should be communicated in writing to him; but the same was not then done for want of time.

Second question by Mr. Douglass:

Have you had any conversation with Judge Spencer on the subject, and when, for the first time? A. Yes, this morning; the judge advised the communication to the House before the final passing of the bill; he appeared to have heard of the subject before.

Nathaniel Cole, Esq., being duly sworn, deposes and says: That soon after he came to Albany, the aforesaid John Martin called on him several times; that the deponent had formerly known said Martin at Richfield; that from conversations about receiving a present for a vote after it was given, and from said Martin's having no ostensible business at Albany, the deponent had suspicions of him; that about three weeks ago he told the deponent he wished to have a private conversation with him; and on the day following, after the adjournment of the House, a conversation took place between them, in which, after observations about his (the deponent's) circumstances, said Martin introduced the subject of the six million bank, and said that if the deponent could see it right to vote for the bank, he (Mar-

tin) could make it profitable to the deponent; that the deponent observed, that he had no hostility to the measure, and if he could be convinced that a bank was necessary in the city of New York, he should not object to it; that he said this to draw Martin on; that nothing further passed at that time, and that no particular meeting afterward took place between them, until about a week before the vote on the first section of the bill was taken in committee of the whole; but that in occasional conversation, said Martin told the deponent that he, the deponent, should have shares in the bank that should produce him at least three hundred dollars, if he would vote for the bank, and the same succeeded; and if the deponent did not want the shares he should have the money, and might have it before he left Albany; that in some one of these conversations the deponent observed to said Martin, that he, Martin, was probably employed by some of the agents or stockholders of the bank; Martin said he was, but did not say by whom, nor did the deponent ask him by whom he was employed; that about a week before the passage of the first clause of the bill, the deponent met said Martin at the Capitol; that Martin then said he was sure of carrying the bank; the deponent asked him if he had made any offers to the deponent's room mates; Martin evaded a direct answer, but observed that what he had said was in confidence, as he wished what he said to the deponent should be, from which the deponent inferred that he had made offers to the deponent's room mates; that the deponent told Martin that he thought the application for the bank ought not to be granted, and that it would be wrong in him, therefore, to vote for it; that the deponent repeated to the said Martin that he, the deponent, had suspicions that he, Martin, had made offers to others as well as to the deponent, and observed to him that the means made use of by him, Martin, to obtain the passing of the bill, were more odious to the deponent than the bill itself, and he desired him, the said Martin, to say no more on the subject, and not to have any further intercourse with him, the deponent; that there was no further intercourse between them, until the evening before the first section of the bill passed, when said Martin, being in company with Mr. Shoemaker, met the deponent at the door of the Capitol, and expressed great confidence in the success of the bill; that the morning of the day on which the first section of the bill was carried, and before the vote was taken, said Martin again accosted the deponent at the door of the Capitol as he was entering, and told the deponent that if he could make it consistent to vote for it, he should have more than three hundred dollars; that deponent said he could

not vote for it and passed on; that the night before the vote was taken on the first section, the deponent communicated to Mr. Bicknell the offers made to him, and added that he thought he ought to disclose them to the House by affidavit; that Mr. Bicknell dissuaded him from so doing, as Martin, he said, appeared to be a clever man, of whom he never heard any harm before; and the deponent being unwilling to come forward, unless he found some other person who could make similar disclosures, remained silent; that in the evening of the day on which the first section was carried, Martin applied to the deponent, and expressed a hope that the deponent would not expose him, as what he had said was in confidence; that the deponent declared his abhorrence of Martin's conduct, and his fears that similar offers had been made by him to others, and that they had been influenced thereby; and told him that if he had made any such offers he ought to recall them, and be off with himself; that Martin appeared alarmed, but made no reply. This was the last conversation between them.

The deponent further testified, that about four years ago he knew Martin, who was then a public preacher, and, as the deponent understood, kept a school in the town of Warren, in the county of Herkimer; that the last time he saw said Martin, previous to this winter, was about two years ago, at the deponent's house, just before election, he was then traveling about the country with pamphlets; that Martin told the deponent that he lodged, when in Albany, at two of his cousins, and that he had been in New York last fall; that the deponent communicated the offers said Martin had made him to Mr. Holmes, to Mr. Rouse, and to Mr. Comstock; he also communicated the same to the Governor, yesterday morning or the night before, and then for the first time.

That the deponent communicated to Mr. De Witt Clinton his suspicions of improper means being used in favor of the bank, but said nothing of the offers made to the deponent; that the deponent laid a statement, in writing, of the facts now sworn to, before the Governor.

That the deponent has had conversations with a Mr. Caleb Atwater, on the subject of the bank; in the first conversation said Atwater declared himself against the bank, and urged the deponent to oppose it, at the same time declaring that he, Atwater, could have five hundred dollars, or one hundred dollars a day, if he would advocate it; that afterward, in other conversations, the said Atwater expressed himself in favor of the bill, and endeavored to persuade the deponent to vote for it, then declaring that he formerly thought that undue means were used to promote its success, but now believed there was

as much corruption on one side as the other; that the deponent did not think said Atwater entitled to credit.

That the deponent, on the morning after the vote was taken on the first section of the bill, received a note from Mr. Solomon Southwick, requesting the deponent to call on him; the deponent went accordingly, and communicated to Mr. Southwick the substance of his present testimony; that he made the communication in consequence of Mr. Southwick's telling him that he, Southwick, had heard that the deponent had received such offers, as aforesaid, from John Martin, and was about to make an affidavit thereof; Mr. Southwick said he wished the bill to pass in its present form; said he had no interest in it himself, but some of his friends had; that he, Southwick, should shield or justify those who voted for it, by making it appear a proper measure, in publications after the passing of the bill; said he hoped the deponent would not expose Mr. Martin, and intimated that the deponent's making an affidavit would expose him, the deponent, to the danger of contradiction; that the language used was calculated to deter the deponent from disclosure, and had an influence on him; that Mr. Southwick said, if the deponent would vote for the bill as it stood, his so doing should be gratefully acknowledged; that the deponent then had not, and now has not any determinate idea of what was intended thereby; that this remark was made after the conversation about the offers of Martin, and about the deponent's intention of making an affidavit respecting the same; that deponent had no acquaintance with Mr. Southwick before the present session; that others have said harder things against the bank than Mr. Southwick has said in favor of it; and that many persons have solicited the deponent's support of other bills, and made as strong proffers of gratitude therefor, as Mr. Southwick did in the case of the bank of America; that no other person than Mr. Southwick, ever told the deponent that his support of the bill in question, would be gratefully acknowledged.

Thomas Ludlow, Esq., being duly sworn, deposes and says: That some time last week, in conversation with Daniel Sayre, said Sayre asked the deponent's opinion of the Bank of America; that the deponent gave none. That said Sayre said he should like to get some shares in it, and requested the deponent's aid in procuring some for him; that the deponent told him he could give no such aid, for that he knew none of the applicants for the bank; that no further conversation took place between them until Saturday last, after the vote on the first clause of the bill, when Sayre called the deponent aside,

in the lobby of this House, and entered into conversation on the subject of the bill, and intimated that those who advocated the bill would be rewarded; that he (Sayre), was authorized to say that those who aided the bank would have shares, or some few hundred dollars, and if the deponent would aid it, he (Sayre) would endeavor to have some shares reserved for him, the deponent; that the deponent mentioned this within a few hours afterwards to Mr. Close and others; that Mr. Sayre lives in Greene county; that the deponent understood he was to be paid for his vote, if in favor of the bank; that the said Mr. Sayre did not enjoin any secrecy whatever relative to this subject at any time.

Bennett Bicknell, Esq., being duly sworn, deposes and says: That about a fortnight ago John Martin asked the deponent to vote for the Bank of America, and said that if the deponent could see it his duty and thought it just to vote for it, he (Martin) could make it profitable to him; that the deponent replied that he could not perceive that it was just, and therefore could not vote for it; that the deponent inquired whether he (Martin) was an agent for the bank; that Martin said he was, but gave no names of his employers, nor did the deponent ask him for their names; that deponent told him that he (the deponent) had heard of the offers which he (Martin) had made to Mr. Cole, and expressed his (the deponent's) regret thereat, and told him that he (Martin) had done wrong, and exposed himself to punishment; that Martin afterward said he was sorry he had supported the bank, and that he was deceived.

The deponent being asked whether he had seen Martin with any other members of this House, made answer that he had seen said Martin with Mr. Woodworth and with Mr. Shoemaker.

Samuel Campbell, Esq., being duly sworn, deposes and says: That no offers have been made to induce him to vote for the bill incorporating the Bank of America.

Oliver C. Comstock, Esq., being duly sworn, deposes and says: That about a week before the passing of the first section of the aforesaid bill, Mr. Holmes communicated to the deponent the offers made to him (Mr. Holmes) by Martin; that the deponent suggested the propriety of not making any disclosure, unless he (Mr. Holmes) could substantiate facts of importance; that a similar communication was made to the deponent by Mr. Cole, to whom the deponent made a similar suggestion; that the deponent considered these offers as attempts to corrupt the members of this House; and the reasons why the deponent made no disclosure thereof to the House, are detailed in the following statement:

Mr. Solomon Southwick communicated to the deponent by letter, and in conversation last Monday or Tuesday, that he (Mr. Southwick) understood that Mr. Cole was about to make an affidavit respecting offers made him by Martin, or some other person, to vote for the six million bank. Mr. Southwick solicited the deponent to use his (the deponent's) influence with Mr. Cole, to suppress the intended affidavit, and said he considered the measure (of passing the bill incorporating said bank) as a proper one, and its supporters as honest and honorable men; that some worthless men, unconnected with the applicants, might have made improper offers to the members, and thereby its honest and honorable friends might be unjustly implicated; that no man ought to be brought into suspicion on account of such fellows, and that if suspicion was thrown upon the supporters of the bank, he (Mr. Southwick) should be obliged to repel it, let imputation fall on whom it would.

The deponent further says, that he has had conversation on the subject of the supposed bribery, with Lawrence L. Van Kleeck, the Governor and Judge Spencer; with the latter, on Monday last, for the first time. The deponent did not then communicate what he now states to the House; that the deponent had before been made acquainted, by Mr. Holmes and Mr. Ludlow, with the substance of their testimony given to the House on this examination. The deponent went with Mr. Holmes, this morning, to Judge Spencer's, where they found Mr. Ogden, and Mr. Holmes there gave a detail of his testimony; whereupon, it was advised by Judge Spencer to proceed in the business as they have done. The deponent and Mr. Ogden then went, with Judge Spencer, to the Governor's, who observed, that the business might be brought before the House in the way that has been pursued, or by a communication from himself, of a letter to be written to him by Mr. Cole. The opinion was, that it would be proper to pursue the course that has been pursued by Mr. Ogden; that the object of the disclosure was to bring the parties concerned to punishment, and that the deponent also supposed that further discoveries might be made in the course of the investigation, and that should the corrupt offers, by such investigation, be traced to the agents of the bank, it would defeat the bill; that the deponent supposed that the disclosure and examination would have an influence on the final passing of the bill; that the deponent does not know when Mr. Ogden first became acquainted with the facts above stated; that deponent believes that Martin was employed by some of the friends of the bank; that the deponent grounds that belief on

the facts and circumstances disclosed to the House in testimony; that the deponent did not know, nor had he heard of any undue attempts upon any member of this House, other than those he has mentioned, to influence such member in his vote upon any question relative to the said bank.

Denison Randall, Esq., being duly sworn, deposes and says: That no offer was ever made to influence his vote.

Thomas P. Grosvenor, Esq., being duly sworn, deposes and says: That he knows of no improper attempt to influence the vote of any member, either for or against the bank; that he knows nothing of Martin, but that he knows Mr. Daniel Sayre, of Greene county, mentioned by Mr. Ludlow, when under examination; that the deponent has known said Sayre long and intimately; that said Sayre has always sustained an unimpeachable character, and stands as high in point of reputation, as any man in the State; that the deponent always understood from said Sayre and others, and fully believes that he (Mr. Sayre), was attending the Legislatue during the present session, on the subject of the court-house in Greene county, for the purpose of advocating the removal of it to Cairo, the town in which he (Mr. Sayre), lives, and that he left Albany, as the deponent understood, the day on which the Senate decided that question; that the deponent had conversation with the said Sayre when in Albany, on the subject of the bank, and that said Sayre expressed himself in favor of it; but that nothing ever passed between them, or fell from Sayre, that could induce the smallest suspicion that undue influence was used by Sayre or any other person, to promote the success of the bank.

The deponent further testifies, that the paper writing now produced and shown to him, containing the resolution and statement offered yesterday to the House by Mr. Ogden, is in the handwriting of Judge Spencer.

Samuel Woodworth, Esq., being duly sworn, deposes and says: That no offer or undue attempt was ever made to influence his vote in favor of the bank, and that he knows of no improper influence to obtain its charter; that Martin called on the deponent, and asked him whether he intended to support the bill; that the deponent replied, that he had not informed any one how he should vote; that Martin then observed that there would be shares reserved for those who voted for the bank; that the deponent replied, that he should not sell his vote, and expressed indignation at the intimation of said Martin; that Martin apologized for the suggestion, and afterward

repeated the apology; that no further or other attempt was made by Martin, or any other person, to influence the deponent's vote.

Rudolph I. Shoemaker, Esq., being duly sworn, deposes and says: That he knows of no improper influence in favor of, or against the bank; that the deponent saw Martin, and heard him express himself favorably to the bank, but never knew him to make any offers to influence the vote of any member.

Samuel H. Coon, Esq., being duly sworn, deposes and says: That no attempt has been made to influence the deponent's vote, nor, as far as he knows, to influence the vote of any other member for or against the bank; that deponent has heard Martin express himself favorably to the bank, but never knew him to make any offers respecting it.

Isaac Ogden, Esq., being duly sworn, deposes and says: That the circumstances of the meeting at Judge Spencer's were as has been stated by Mr. Comstock; that the deponent, together with Mr. Comstock and Judge Spencer, went to the Governor's; that it was there thought best for a member to communicate the substance of Mr. Holmes' testimony to the House, and that Mr. Comstock or himself should make the communication; that as it was late, and the deponent had to go to his lodgings before coming to the House, he desired Judge Spencer to draw the communication, in such terms as would be proper and most suitable to use, and send it to him in the House; that the deponent afterward received the paper containing the resolution and statement from the door-keeper; that the deponent never heard of the corrupt offers of Martin till yesterday morning, at Judge Spencer's when the judge informed him that he (Judge Spencer) had understood that Mr. Comstock knew that corrupt offers had been made to Mr. Holmes, to influence his vote in favor of the bank; that the judge thereupon sent for Mr. Comstock, requesting him (Mr. Comstock) to bring Mr. Holmes with him to the judge's house, in order to state to the deponent what offers had been made to him (Mr. Holmes) on the subject.

Thereupon,

Resolved, That the doors of this House be now opened, and that the injunction of secrecy imposed on the members and officers of this House, relative to all the proceedings with closed doors, be removed.

The doors of the House having been accordingly opened,

Mr. Comstock made a motion that the House should agree to a resolution, with recitals, which was read, in the words following, to wit:

Whereas, It appears from the testimony of Silas Holmes and Nathaniel Cole, Esqs., two of the members of this House, that improper and corrupt overtures have been made to them by John Martin, to induce them to vote for the passage of the bill now pending before this House, entitled "An act to incorporate the stockholders of the Bank of America;" and, whereas, it is suggested that certain absent members of this House are in possession of some facts relative to such overtures; therefore, that time may be afforded to prosecute the requisite inquiries and examination of the same, so as to enable the members of this House to act understandingly in giving their votes on the final passage of the said bill.

Mr. Radcliff then made a motion that the House should agree to a resolution with the recitals, which was read in the words following, to wit:

Whereas, On Friday morning, the 13th inst., on the third and last reading of the bill entitled "An act to incorporate the stockholders of the Bank of America," a member of this House moved that the final question on the passing of the said bill should be postponed, and at the same time stated in his place, that some of the members of this House had been attempted to be seduced by bribes from the performance of their duty; whereupon, the floor of this House was immediately cleared of all persons excepting the members and officers thereof, and the House proceeded to the investigation of the said charge; and, whereas, upon such investigation, no fact or circumstance has appeared, which, in any degree, implicates or casts suspicion upon any member who has voted in favor of the said bill, or any part or section thereof, or upon any other member of this House. Therefore,

Resolved, That the House now proceed to the final vote upon the said bill.

Mr. President first put the question whether the House would agree to the said resolution, and it was carried in the affirmative.

Mr. Speaker then put the question whether the House would agree to the recitals prefixed to the said resolution, and it was carried in the affirmative by the votes of all the members present.

Assembly Journal, 1812, pages 259–266 and 267.

ASSEMBLY CHAMBER, *March 17th*, 1812.

The sergeant-at-arms, to whom Mr. Speaker, in pursuance of a resolution of this House of Friday last, had issued and directed his warrant for the apprehension of John Martin, made return thereto in the words following, to wit:

STATE OF NEW YORK:

Pursuant to warrant of the Hon. Alexander Sheldon, Esq., speaker of the House of Assembly of the State of New York, to me directed and delivered on the thirteenth day of March instant, commanding me forthwith to apprehend John Martin, of Plainfield, in the county of Otsego, on a charge of a contempt of the privileges of this House, I proceeded from this place to the dwelling-house of the said John Martin, in Plainfield aforesaid, and on diligent search and inquiry could not apprehend or find the said John Martin.

TH. DONNELLY,
Sergeant-at-arms of the House of Assembly.

Dated at the Capitol in the city of Albany, *March 17th*, 1812.

Assembly Journal, 1812, page 279.

THE GOVERNOR REQUESTED TO ISSUE A PROCLAMATION AND OFFER A REWARD FOR THE ARREST OF JOHN MARTIN.

ASSEMBLY CHAMBER, *March 18th*, 1812.

Resolved, That his excellency the Governor be and he is hereby requested to issue a proclamation, offering such reward as he may deem proper for the apprehending of John Martin, of Plainfield, in the county Otsego, who stands charged on oath with a contempt and breach of privileges of this House, and that the payment of the said sum shall be provided for by law.

Assembly Journal, 1812, page 281.

In the matter of the Breach of Privilege of Daniel Sayre.

CHARGED WITH OFFER OF A BRIBE TO PROCURE CHARTER OF THE BANK OF AMERICA.

ASSEMBLY CHAMBER, *March* 18, 1812.

A communication addressed to the honorable the Speaker of the Assembly was read in the words following, to wit:

To the Honorable ALEXANDER SHELDON, Esq., *Speaker of the House of Assembly:*

SIR.—Having received the painful information that I stand accused before your honorable body by the oath of Thomas Ludlow, Esq., a member of your House, of having made improper overtures to him, to vote for the incorporation of the Bank of America, I now present myself, together with my affidavit, rebutting the principal charges against me, which I desire may be read. I then present myself, before the bar of your House, to make such further statements under oath to your honorable body, as shall be thought proper to be asked me, touching the charges alleged against me by the said Mr. Ludlow.

I then, sir, request that the gentlemen within the walls of this House, from the county of Greene, may be called upon to testify to my particular and general character. Gentlemen from that county present are Col. Samuel Haight, Moses I. Cantine, Ira Day, James Bell, Isaac Northrop, Stoddard Smith, Thomas Lawrence, Caleb Benton, Peter C. Adams, and many others I can name if necessary.

I then, sir, request that the following members of Assembly who boarded in the same house with me during my stay in Albany, to wit, Mr. Vanderveer, Mr Andrus, Mr. Guyon, Mr Ely, and Mr. Sayre, be called upon to state to the Assembly, what they have seen or heard from me improper respecting the bank, likewise General Rose of the Assembly, who has known me from my youth until this time. And then that each and every member be called upon to answer in his place, whether any, and if any, what overtures have been made to them by me, to vote for the incorporation of the Bank of America.

DANIEL SAYRE.

Dated Albany, *March* 18, 1812.

Daniel Sayre, of the county of Greene, being duly sworn, deposeth and saith: That he this day hath seen the affidavit of Thomas Lud-

low, Esq., a member of this House, stating that this deponent asked his aid in procuring shares in the Bank of America, for this deponent; and that this deponent intimated to the said Ludlow, that those who advocated the said bill would be rewarded, and that those who aided the bank would have shares or a few hundred dollars; and that if the said Ludlow would aid it, he, this deponent, would endeavor to have some shares reserved for him, &c. This deponent did, on the day the first enacting clause of the bill, incorporating the Bank of America passed this House, asked the said Ludlow his opinion on the passing of the said bill, and he said he could not give any. On the Friday or Saturday morning following, this deponent went into the lobby of this House, and there found Mr. Ludlow sitting by the stove smoking his pipe; this deponent sat down by him, and a lengthy conversation took place between them, on the subject of banks heretofore incorporated, and on the incorporation of the Bank of America in particular; in which this deponent expressed, in the strongest terms, his disapprobation of bribery, or any attempt to exercise an undue influence over the minds of the members of the Legislature. That this deponent is not, nor ever was authorized to offer bank shares or money to procure votes for said bank, nor did he ever make such offer to Mr. Ludlow, as he hath stated, to procure his vote; and all the conversation, alluded to by Mr. Ludlow, that did take place between this deponent and him, was loose in its nature and not intended to make an undue influence on his mind. This deponent further states, that he never did, at any time or place, say to Mr. Ludlow, or any other person, that the friends of the bank would be rewarded with a few shares or some hundreds of dollars; and has no recollection of hearing an assertion of that kind anywhere made, until he saw it in Mr. Ludlow's affidavit. This deponent further saith, that he never asked Mr. Ludlow to aid him in procuring shares in said bank; and this deponent hath no recollection of any particular conversation on the bank subject, between the said Ludlow and himself, except in the lobby, sitting by the stove, where people were sitting and standing around, except in the first instance, when this deponent asked his opinion about the bill's passing. And this deponent further saith, that he never was the owner of a bank share in any bank; and that he hath never had any conversation with any agent of the Bank of America on the subject, to his knowledge, nor has he been authorized by them to make any offers to members of this House to support the bank. And this deponent further saith, that his past attendance on this Legislature, as is well known to the mem-

bers of this House, hath been on the removal of the court-house in the county of Greene. And further this deponent saith not.

DANIEL SAYRE.

Dated ALBANY, *March 17th*, 1812.
Sworn before me, on the 18th of March, 1812.

STODDARD SMITH,
One of the Masters in Chancery.

Thereupon,

Resolved, That the powers of the committee appointed on Friday last to conduct the examination before this House, touching the charge of corrupt overtures made to some of its members to influence their votes upon the bill for incorporating the Bank of America, be, and the same are, hereby continued until the whole of the examination relative to that subject shall be closed.

Whereupon the said committee proceeded, in the presence of the House, to examine, on oath, Daniel Sayre, Esq., of the town of Cairo, in the county of Greene; Thomas Ludlow, Esq., a member of this House from the county of Cayuga; John C. Vanderveer, Esq., a member of this House from the county of Kings; John Ely, Esq., a member of this House from the county of Greene; Abraham Rose, Esq., a member of this House from the county of Suffolk; Humphrey Howland, Esq., a member of this House from the county of Cayuga; Oliver C. Comstock, Esq., a member of this House from the county of Seneca; Moses I. Cantine, Caleb Benton, Isaac Northrop and Ira Day, Esqs., of the county of Greene, and Enos T. Throop and Hugh Buckley, Esqs., of the county of Cayuga; and after having gone through the same, the testimony was read to the several deponents in the presence of the House, and agreed to by the same, and is in the words following, to wit:

Daniel Sayre, Esq., of the town of Cairo, in the county of Greene, being duly sworn, deposes and says: That he knows Thomas Ludlow, a member of this House from the county of Cayuga; had been acquainted with him a number of years ago, and was again introduced to him in the early part of the present session of the Legislature; that in the afternoon of the day on which the first enacting clause of the bill incorporating the stockholders of the Bank of America, passed in committee of the whole, the deponent called on the said Thomas Ludlow, at his lodgings, and mentioning to him that the deponent was about to leave town, asked him (Ludlow) what he thought of the passage of the bill, and whether he supposed it would

pass the House or not; that said Ludlow replied that he could give no opinion on the subject; that nothing further passed between them in relation to the bank at the time; that the next morning the deponent had another conversation with the said Thomas Ludlow, in the lobby of this House; that the deponent on this occasion found Mr. Ludlow sitting by the stove, and took a seat along side of him, when a conversation ensued between them of considerable length, on the subject of the various incorporations of banks by this State, and respecting the application before the Legislature for the incorporation of the Bank of America; that in the course of that conversation the deponent observed that if the Bank of America should be incorporated, he, the deponent, should like to have shares in it, and that he had heard that there would be shares to be disposed of; but that the deponent never, at any time, or on any occasion, to his recollection or belief, solicited the aid of the said Ludlow, or any other person, in obtaining shares for him, the deponent; nor did he, the deponent, ever, to his knowledge or belief, intimate to the said Ludlow that those who advocated the bill would be rewarded, or that he, the deponent, was authorized to say that those who aided the bank would have shares or money, or that he, the deponent, would endeavor to have shares reserved for the said Ludlow, in case of his aiding the bank, or anything to that effect.

The deponent further says, that he never was authorized, requested or empowered, by any person or persons whomsoever, to make any offers of shares or money, or other gratuity, to any member of the Legislature, to induce him to vote for the bill, or to influence his vote in its favor; and that he, the deponent, never did make any such offer, or give any intimation to any member, of any gratuity whatever being reserved or intended for him in case of his supporting the bill, or in order to influence his vote in its favor; but that the said Thomas Ludlow, having suggested to the deponent, in the course of conversation, that he (Ludlow) supposed shares would more easily be obtained by those who advocated than by those who opposed the application, the deponent replied thereto, that he had no knowledge whether such would be the case or not; that he had heard nothing about the matter, but thought it likely that those who were in favor of the bank might be able to procure shares in it, or to that effect; that just before parting with the said Thomas Ludlow, the deponent said he would like to have shares in the said bank, and had heard they were to be obtained, and that if he (Ludlow), wished to have any, he, the deponent, would speak to some of the

deponent's friends in Albany, to know whether any could be procured for him; that in the course of the conversations with the said Ludlow, the deponent expressed his disapprobation of all attempts to influence the vote of any member; and that he had no intention whatever, in what passed between them, to induce the said Ludlow to suppose that he would be paid for his vote, if in favor of the bank; nor did he ever say anything to the said Thomas Ludlow that was intended, or in his opinion calculated to make that impression upon him; that the last mentioned conversation between the deponent and Mr. Ludlow, in the lobby of the House, on the subject, was in the presence of others, and no secrecy observed or required, nor any pains taken to prevent any other person from hearing the same.

The deponent further says, that he, the deponent, never had any interest in the said bank, nor in procuring the incorporation thereof; and has never, to his knowledge or belief, had any conference or conversations with any agent or agents of the said bank, touching the incorporation thereof; that the deponent came to Albany, and was attending there during the time of his stay in the city, to solicit the placing of the court-house of Greene county, in the town of Cairo, wherein the deponent lives; and that he left Albany, on his return home, as soon as the question, as to the location of the said court-house was decided in the Senate; that during the above mentioned conversation, which took place between the deponent and the said Thomas Ludlow, in the lobby of the House, they sat near the stove; and that the deponent did not call the said Ludlow aside, nor did he, the deponent, quit his seat or remove or go to any other part of the room or lobby, until Mr. Stanley called for him to go home.

Thomas Ludlow, Esq., being again called and examined, confirms the testimony by him heretofore given to this House on this subject; says that he understood, from what passed between him and Mr. Sayre, that he, the deponent, was to be paid in shares or money for his vote, in case it was in favor of the bank; that as they were parting, Mr. Sayre said he would see the deponent again, and the deponent observed that he would think of it, meaning thereby, that he would reflect on the propriety of holding any further conversation with the said Daniel Sayre on the subject; and that, upon reflection, he determined that he would not; that the conversation between them in the lobby was in a low voice, in a corner of the room (whither they had gone at the request of Mr. Sayre), and could not be heard by others who were in the room at the time, and the deponent thinks

that, after retiring to the said corner of the room as aforesaid, they did not return to the stove; that he, the deponent, mentioned the substance of the said conversations, immediately or soon after the same took place, to Mr. Close and to Mr. Comstock, and also to Mr. Ross, but did not mention the name of Mr. Sayre; thinks he told them that offers of shares had been made him, to induce him to vote for the bank; did not inform them by whom; that he expressly told Mr. Ross that he would not disclose to him (Mr. Ross), the name of the person who had made the said attempts upon him; that the reason why the deponent did not disclose to the House the offers made to him, was that he did not know what was the proper course for him to pursue.

John C. Vanderveer, Esq., being duly sworn, deposes and says: That he knows Mr. Sayre, and boarded in the same house with him in this city; never knew or heard of any overture or attempt, on the part of the said Sayre, to influence the vote of any member of the Legislature, either directly or indirectly; nor ever saw anything in his conduct that discovered or indicated any agency or improper means on his (the said Sayre's) part, in favor of the bank.

John Ely, Esq., being duly sworn, deposes and says, the same as is testified to by the last witness; and adds, furthermore, that he has long known Mr. Sayre, and that his character is fair and unimpeachable.

Abraham Rose, Esq., being duly sworn, deposes and says: That he has known Mr. Sayre from childhood; that the said Sayre has always sustained a fair character and his reputation is unblemished; that said Sayre has conversed with the deponent on the subject of the application for the Bank of America, and expressed himself favorably to its incorporation, but that the deponent never knew or heard of any overture or attempt on the part of said Sayre, to influence the vote of the deponent or of any other member of the Legislature in favor of the said bank.

Moses I. Cantine, Caleb Benton, Isaac Northrop and Ira Day, Esqs., being severally sworn, do severally depose and say: That they know the before named Mr. Sayre, and that his character, as an honest man and man of veracity, is unimpeached, and as fair as that of any man in the county in which he resides.

Enos T. Throop, Hugh Buckley and Oliver C. Comstock, Esqs., being severally sworn, and Humphrey Howland, Esq., being duly affirmed, do severally depose and say: That they know the before named Thomas Ludlow, Esq., and that his character, as an honest

man and man of veracity, stands fair; they never heard it called in question.

Then the House adjourned until ten o'clock to-morrow morning.

Assembly Journal, 1812, pages 284 to 288.

ASSEMBLY CHAMBER, *March 19th*, 1812.

The committee appointed to conduct the examination before this House into a charge of improper practices in relation to the bill incorporating the Bank of America, proceeded in the presence of the House to examine on oath Nathaniel Allen, Esq., a member of this House from the county of Ontario; and after some time spent in such examination, it was, on motion,

Resolved, That the doors of this House be again opened.

Assembly Journal, 1812, page 293.

MR. SAYRE FOUND NOT GUILTY AND DISCHARGED.

ASSEMBLY CHAMBER, *March 20th*, 1812.

Mr. Grosvenor then made a motion that the House should agree to a resolution with recitals, which was read, in the words following, to wit:

Whereas, Thomas Ludlow, one of the members of this House, hath, upon his examination on oath before the House, deposed that Daniel Sayre, of the county of Greene, did, while the bill for incorporating the Bank of America was pending in this House, make improper overtures to him (the said Thomas Ludlow) to influence him to vote in favor of the said bill; and whereas, such overtures, if deliberately and willfully made, would be a violation of the privileges of this House; and whereas, the said Daniel Sayre hath voluntarily appeared before this House and prayed to be permitted to purge himself on oath of the charge aforesaid so far as relates to a breach and contempt of the privileges of this House; and whereas, the said Daniel Sayre had by the permission of this House been examined on oath touching the premises, and upon such examination deposed that he had never made or intended to make any overtures of an improper nature to the said Thomas Ludlow or any other member of this House to facilitate the passage of the said bill, and that he has not and never has been directly or indirectly interested or employed to aid the passage of said bill; and whereas, from the unblemished reputation and exemplary moral character of the said Daniel Sayre, the House are persuaded that the charge aforesaid against him is founded in mistake and misapprehension. Therefore,

witnesses. If I appear before the committee, beyond all doubt, my testimony will be at variance with that of some of the corrupt actors in that scene; and it will be essentially necessary, as well to the corroboration of my evidence, as also to fix the charge on these corrupt actors, that witnesses should be summoned from remote parts of the State. When it is considered that the present Legislature must adjourn in a few days, I am decidedly of opinion, and in that I am confirmed by my counsel, were the committee disposed to make a thorough investigation, the short space of time allowed for it will not admit of such investigation. I will not disguise the fact that public confidence in the purity of the present Legislature is so impaired that it is unfit, in the opinion not only of myself, but my counsel, that such an important inquiry should be conducted by them or by any committee raised under their authority, when it is considered also that several of the members of both Houses are deeply implicated, public justice would be better promoted by deferring the investigation until the meeting of the next Legislature.

I owe it to myself to add that it is my fixed determination to prefer charges to the next House of Assembly against several persons who have had a corrupt agency in procuring the passage of the act incorporating the Chemical Bank, and whatever construction may be put on my declining to appear before your honorable committee by those who are implicated, I beg you to believe I shall not shrink from the responsibility I have assumed upon myself.

Your obedient servant,

WILLIAM J. CALDWELL.

Hon. JOHN C. TILLOTSON, Esq.,
Chairman of the Committee.

Thereupon, on motion of Mr. Whiting,

Resolved, That the communication of William J. Caldwell, dated November 11th, 1824, addressed to the Hon. John C. Tillotson, chairman of a select committee of this House, is a gross and indecent libel upon and a contempt of this House.

Resolved, That His Honor the Speaker be directed to issue his warrant to the sergeant-at-arms to arrest the said Caldwell and bring him forthwith to the bar of this House.

On motion of Mr. Livingston,

Resolved, That the committee appointed to inquire whether any corrupt or improper means were used by the applicants to obtain the charter of the Chemical Bank be instructed to inquire by whom the

In the matter of the Breach of Privilege of William J. Caldwell,

RELATIVE TO PROCURING CHARTER OF THE CHEMICAL BANK.—SPECIAL COMMITTEE APPOINTED.

ASSEMBLY CHAMBER, ALBANY, *November* 5, 1824.

On motion of Mr. Tillotson,

Resolved, That a committee of five members be appointed, to inquire whether any unfair or corrupt practices were used, for the purpose of obtaining an act of incorporation for the Chemical Bank, and to inquire into the conduct of the agents for that application, and all the circumstances attending the passage of the bill. And that the said committee have power to send for persons and papers, and report their proceedings herein, during the present session of the Legislature.

COMMITTEE.

Ordered, That Mr. Tillotson, Mr. Hubbard, Mr. Wheaton, Mr. Ruger and Mr. Howe be the said committee.

Assembly Journal, 1824, page 1179.

STATEMENT OF CHAIRMAN OF COMMITTEE.

November 12, 1824.

Mr. Tillotson, chairman of the committee appointed to inquire whether any unfair or corrupt means were used, in the procurement of the charter of the Chemical Bank, stated that he had received a communication from one William J. Caldwell, reflecting upon the honor and character of this House.

CLOSED DOORS.

Thereupon, the House proceeded to sit with closed doors, and the said communication was read in the words following, to wit:

ALBANY, *November* 11, 1824.

GENTLEMEN.—I arrived in this city yesterday, in obedience to a summons from the chairman of the committee appointed by the House of Assembly, to investigate the subject of the incorporation of the Chemical Bank. I have ascertained, to my entire satisfaction, that the committee have determined to admit, as witnesses, the persons implicated as parties to the corrupt means made use of to procure the passage of the act incorporating that bank. Indeed, I am informed by the chairman that two of three persons have already been sworn as

witnesses. If I appear before the committee, beyond all doubt, my testimony will be at variance with that of some of the corrupt actors in that scene; and it will be essentially necessary, as well to the corroboration of my evidence, as also to fix the charge on these corrupt actors, that witnesses should be summoned from remote parts of the State. When it is considered that the present Legislature must adjourn in a few days, I am decidedly of opinion, and in that I am confirmed by my counsel, were the committee disposed to make a thorough investigation, the short space of time allowed for it will not admit of such investigation. I will not disguise the fact that public confidence in the purity of the present Legislature is so impaired that it is unfit, in the opinion not only of myself, but my counsel, that such an important inquiry should be conducted by them or by any committee raised under their authority, when it is considered also that several of the members of both Houses are deeply implicated, public justice would be better promoted by deferring the investigation until the meeting of the next Legislature.

I owe it to myself to add that it is my fixed determination to prefer charges to the next House of Assembly against several persons who have had a corrupt agency in procuring the passage of the act incorporating the Chemical Bank, and whatever construction may be put on my declining to appear before your honorable committee by those who are implicated, I beg you to believe I shall not shrink from the responsibility I have assumed upon myself.

Your obedient servant,

WILLIAM J. CALDWELL.

Hon. JOHN C. TILLOTSON, Esq.,
Chairman of the Committee.

Thereupon, on motion of Mr. Whiting,

Resolved, That the communication of William J. Caldwell, dated November 11th, 1824, addressed to the Hon. John C. Tillotson, chairman of a select committee of this House, is a gross and indecent libel upon and a contempt of this House.

Resolved, That His Honor the Speaker be directed to issue his warrant to the sergeant-at-arms to arrest the said Caldwell and bring him forthwith to the bar of this House.

On motion of Mr. Livingston,

Resolved, That the committee appointed to inquire whether any corrupt or improper means were used by the applicants to obtain the charter of the Chemical Bank be instructed to inquire by whom the

communication of the eleventh of November, 1824, bearing the signature of William J. Caldwell, and addressed to John C. Tillotson, Esq., was written, and that they report the result of their inquiry to this House with all convenient dispatch.

Mr. Tillotson, from the committee appointed to inquire whether any unfair or corrupt means were used by the applicants to obtain the charter of the Chemical Bank, and which was also instructed to inquire by whom the letter of the eleventh November, 1824, addressed to the Hon. John C. Tillotson, and bearing the signature of William J. Caldwell, was written, reported:

That the committee, in pursuance of their instructions, have had the subject under consideration, and upon the examination of several witnesses upon their oaths, do find that the said communication is in the handwriting of Ambrose Spencer.

On motion of Mr. Talmadge:

Resolved, That the injunction of secrecy be observed, until the further order of this House.

And then the House adjourned its secret session until to-morrow. Assembly Journal, 1824, pages 1229, 1230.

Mr. Crary offered, for the consideration of the House, a resolution and recital, in the words following, to wit:

Whereas, The chairman of the committee appointed to inquire whether any unfair or corrupt means were used in obtaining the charter of the Chemical Bank, has received a communication from William J. Caldwell, in the words following:

ALBANY, *Nov.* 11, 1824.

GENTLEMEN.—I arrived in this city yesterday, in obedience to a summons from the chairman of the committee appointed by the House of Assembly, to investigate the subject of the incorporation of the Chemical Bank. I have ascertained, to my entire satisfaction, that the committee have determined to admit, as witnesses, the persons implicated as parties to the corrupt means made use of to procure the passage of the act incorporating that bank. Indeed, I am informed, by the chairman, that two of three persons have already been sworn as witnesses. If I appear before the committee, beyond all doubt, my testimony will be at variance with that of some of the corrupt actors in that scene, and it will be essentially necessary, as well to the corroboration of my evidence, as also to fix the charge on these corrupt actors, that witnesses should be summoned from remote parts of the State. When it is considered that the present Legislature must

adjourn in a few days, I am decidedly of opinion, and in that I am confirmed by my counsel, were the committee disposed to make a thorough investigation, the short space of time allowed for it, will not admit of such investigation. I will not disguise the fact, that public confidence in the purity of the present Legislature, is so impaired, that it is unfit, in the opinion not only of myself, but my counsel, that such an important inquiry should be conducted by them or by any committee raised under their authority. When it is considered, also, that several of the members of both houses are deeply implicated, public justice would be better promoted by deferring the investigation until the meeting of the next Legislature.

I owe it to myself to add, that it is my fixed determination, to prefer charges to the next House of Assembly, against several persons who have had a corrupt agency in procuring the passage of the act incorporating the Chemical Bank; and whatever construction may be put on my declining to appear before your honorable committee, by those who are implicated, I beg you to believe, I shall not shrink from the responsibility I have assumed upon myself.

Your obedient servant,

WILLIAM J. CALDWELL.

Hon. JOHN C. TILLOTSON, Esq.,
Chairman of the Committee.

which communication is proven to be in the handwriting of Ambrose Spencer. Therefore, it is

Ordered, That the said Ambrose Spencer attend at the bar of this House, on Tuesday next, at twelve o'clock, and that a copy of this order be forthwith served on the said Ambrose Spencer.

Ordered, That Mr. Crary, Mr. Edwards, Mr. Flagg, Mr. Wheaton and Mr. Waterman be a committee to frame interrogatories for the examination of Ambrose Spencer, upon the subject of the charges contained in the preceding letter, bearing the signature of William J. Caldwell.

Ordered, That the injunction of secrecy upon the members of this House, in relation to the proceedings upon the communication of William J. Caldwell to the Honorable John C. Tillotson, of the 11th November, 1824, be and the same is hereby removed.

Which communication is proven to be in the handwriting of Ambrose Spencer.

AMBROSE SPENCER ORDERED TO ATTEND AT THE BAR OF THE HOUSE.

Therefore it is,

Ordered, That the said Ambrose Spencer attend at the bar of this House on Tuesday next at twelve o'clock, and that a copy of this order be forthwith served on the said Ambrose Spencer.

COMMITTEE TO FRAME INTERROGATORIES FOR THE EXAMINATION OF AMBROSE SPENCER.

Ordered, That Mr. Crary, Mr. Edwards, Mr. Flagg, Mr. Wheaton and Mr. Waterman, be a committee to frame interrogatories for the examination of Ambrose Spencer, upon the subject of the charges contained in the preceding letter bearing the signature of William J. Caldwell.

Ordered, That the injunction of secrecy upon the members, in relation to the proceedings upon the communication of William J. Caldwell to the Hon. John C. Tillotson, of the 11th November, 1824, be and the same is hereby removed.

Assembly Journal 1824, pages 1237, 1238.

MONDAY, *November* 15, 1824.

The House met pursuant to adjournment.

A communication from Ambrose Spencer, Esq., was read, in the words following, to wit:

ALBANY, *November* 15, 1824.

SIR.—Will you have the goodness to communicate the inclosed letter, to the Honorable the Assembly, this morning?

Yours respectfully,

A. SPENCER.

Hon. RICHARD GOODELL,

Speaker of the House of Assembly.

ALBANY, *November* 15, 1824.

SIR.—I have received a copy of a resolution of the honorable the Assembly, requiring me to appear at the bar of the House on Tuesday next, at 12 o'clock. The ground of this requisition would seem to be, that a communication from William J. Caldwell, to the chairman of the committee appointed to inquire whether any unfair or corrupt means were used in obtaining the charter of the Chemical Bank, was in my handwriting.

In drafting that letter, I acted as the counsel of Mr. Caldwell, and whilst I cannot consent to be held amenable to any tribunal for advice

given in good faith to a client, I am free to declare that it was not my intention to charge or insinuate that the present House of Assembly, or any of its members, were corrupt. If the House have inferred from the fact that the letter presented to the chairman of the committee was in my handwriting that I meant to go beyond the strict line of my duty, as counsel, and embark personally in the question, they have formed an erroneous opinion, I owe it to myself, as well as your honorable House, to declare that I did not expect, or intend, that the letter which I drafted as counsel would have been sent to the committee, or made public; I have, therefore, neither assented to, or had any agency whatever in, the publication of that letter: and I disclaim all personal knowledge of the facts stated in it, as they were derived entirely from the information of my client.

I feel myself incapable of offering a premeditated insult to any branch of the government, and none was intended on my part by the manner in which Mr. Caldwell's views were committed to paper; and I must say that, in my judgment, I have not transcended the duties resulting from my relation to Mr. Caldwell as his counsel.

I trust this frank explanation will be deemed satisfactory to the House.

Respectfully, your obedient servant,

A. SPENCER.

HON. RICHARD GOODELL,
Speaker of the Assembly.

Thereupon, on motion of Mr. Tallmadge,

Resolved, That the order requiring the personal attendance of Ambrose Spencer at the bar of this House on Tuesday next be and the same is hereby rescinded.

WILLIAM J. CALDWELL BROUGHT TO THE BAR OF THE HOUSE.

James D. Wasson, Esq., sergeant-at-arms of the House of Assembly, made a return of the warrant issued on Friday last, for the apprehension of William J. Caldwell, that the said Willian was in custody at the bar of this House.

Thereupon,

Ordered, That the said warrant and return thereon be referred to the select committee, of which Mr. Crary is chairman, with instructions to prepare interrogatories in relation to the alleged contempt of the said William J. Caldwell, against the honor and dignity of this House.

Assembly Journal, 1824, pages 1244, 1245, 1246.

November 16th, 1824.

INTERROGATORIES PROPOSED.

Mr. Edwards, from the committee appointed to frame interrogatories to carry on the investigation upon the subject of an alleged contempt of William J. Caldwell, against the honor and dignity of this House, reported the following as proper interrogatories to be put to the prisoner at the bar. After the prisoner is put to the bar of the House, read to him the letter:

Was the communication now read to you, written at your request?

Did you read the said communication, or was it read in your presence before it was signed, and did you sign your name to the same?

Did you address the said communication to the Hon. John C. Tillotson, chairman of a select committee of this House, or did you direct any other person so to address it?

Did you deliver the said communication thus addressed to the Hon. John C. Tillotson, or to any other person to be delivered to the Hon. John C. Tillotson, as chairman of the said committee?

Did you read the said communication to any person or persons before it was delivered to the Hon. John C. Tillotson, and if yea, to whom?

Did you permit any person or persons to read the said communication before it was delivered to the Hon. John C. Tillotson, and if yea, to whom?

Did you refuse to answer, as a witness, before a committee of which the Hon. John C. Tillotson was chairman?

Thereupon, Mr. Speaker put the question whether the House would agree to the said interrogatories, as reported by the said committee, and it was determined in the affirmative.

Thereupon, the said William J. Caldwell, being put to the bar of the House, on motion of Mr. Cunningham,

Resolved, That a copy of the preceding interrogatories be forthwith served upon the said William J. Caldwell, and that the said William J. Caldwell be required to answer the same upon his written deposition.

On motion of Mr. Cunningham,

Resolved, That the further consideration of the said investigation be postponed until to-morrow, at twelve o'clock at noon.

Assembly Journal, 1824, pages 1253, 1254.

JOINT COMMITTEE APPOINTED.

A copy of a resolution from the Senate, delivered by their clerk, was read in the words following, to wit:

Resolved (if the Assembly concur herein), That a committee of five members of the Assembly and three of the Senate, be appointed to inquire whether any unfair and corrupt practices were used, for the purpose of obtaining an act of incorporation for the Chemical Bank, and to inquire into the conduct of the agents for that application, and all the circumstances attending the passage of the bill; and that said committee have power to send for persons and papers, and report their proceedings herein during the present session of the Legislature, and that in case of such concurrence, that Mr. Sudam, Mr. Clark and Mr. Bowman, be of the said committee on the part of the Senate; thereupon,

Resolved, That this House do concur with the Senate in this said resolution, and that Mr. Tillotson, Mr. Howe, Mr. Hubbard, Mr. Wheaton and Mr. Ruger be of the said committee on the part of the House.

Ordered, That the clerk deliver a copy of the preceding resolution of concurrence to the Senate.

Assembly Journal, 1824, page 1260.

WILLIAM J. CALDWELL AT THE BAR OF THE HOUSE.—INTERROGATORIES PROPOSED, AND HIS ANSWERS.

November 17, 1824.

The sergeant-at-arms then brought William J. Caldwell to the bar of the House.

Whereupon the letter bearing the signature of William J. Caldwell and addressed to the Hon. John C. Tillotson, as entered on the journal of Friday last, was read.

Thereupon Mr. Speaker put to the prisoner at the bar the following questions:

1*st Question.* Was the communication now read to you, written at your request?

To which the prisoner answered: It was written at my request.

2*d Question.* Did you read the said communication or was it read in your presence before it was signed, and did you sign your name to the same?

Answer. I read the communication before it was signed, and I did sign my name to the same.

3*d Question.* Did you address the said communication to the Hon. John C. Tillotson, chairman of a select committee of this House, or did you direct any other person so to do?

Answer. The communication was addressed at my request.

4th Question. Did you deliver the communication thus addressed to the Hon. John C. Tillotson, or to any other person, to be delivered to the Hon. John C. Tillotson, as chairman of the said committee?

Answer. I did not deliver the communication to the Hon. John C. Tillotson myself; I sent it by a boy.

5th Question. Did you read the said communication to any person or persons before it was delivered to the Hon. John C. Tillotson, and if yea, to whom?

Answer. I did not.

6th Question. Did you permit any person or persons to read the said communication, before it was delivered to the Hon. John C. Tillotson, and if yea, to whom?

Answer. I permitted no person to read said communication, previous to sending it to the Hon. John C. Tillotson, except the person who copied it for me, at my request.

7th Question. Did you refuse to answer before the committee of which the Hon. John C. Tillotson was chairman?

Answer. I did refuse to answer, as a witness, before the committee of which the Hon. John C. Tillotson was chairman, on the ground that two persons, as I was informed, were admitted as witnesses; one of whom stands indicted for bribery; the other, and no other person sent for, as a witness, but myself, although the names of a number of witnesses were given to this committee, and what they would probably testify to—they being in the remote parts of the State, and not summoned to appear, as I was informed—I did consider myself justifiable in declining to testify, under the circumstances, as my testimony, I presume, would not agree with those implicated; and I had no reason to believe that witnesses in corroboration of my testimony would be summoned as witnesses before the committee. I have learnt that yesterday a joint committee of the Senate and Assembly are about proceeding in the investigation of the means made use of to obtain the charter of the Chemical Bank; and I am assured by the Hon. John Sudam, chairman of the said joint committee, that it is intended to make a thorough investigation into that subject; and, under this belief, I have concluded to submit to an examination before the committee. With respect to the letter addressed by me to the Hon. John C. Tillotson, it was not my intention to commit any contempt against this House, or to charge the Assembly, as a body, with corruption. In the letter to Mr. Tillotson I expressed a mere abstract opinion, derived from various sources and considerations; and I cannot believe that this House will consider me guilty of contempt when

none was intended, for the expression of an opinion. I have not charged the House with corruption, and never meant to make that charge.

Thereupon, on motion of Mr. Edwards,

Resolved, That it appears from the confessions of William J. Caldwell that he directed Ambrose Spencer to write the communication addressed by him to the Hon. John C. Tillotson, chairman of a select committee of this House, which has just been read by the clerk of this House, to the said William J. Caldwell, and that he (the said William J. Caldwell) directed the same to be delivered to the Hon. John C. Tillotson, which said communication contains charges highly injurious to the honor and integrity of the Legislature, and that his answers furnish no sufficient reason for his refusal to appear before the committee and testify.

Resolved, therefore, That the said William J. Caldwell is guilty of a misdemeanor and contempt of this House. Thereupon,

Resolved, That the sergeant-at-arms take the said William J. Caldwell from the bar of this House and deliver him to the keeper of the jail of the city and county of Albany; that the said William J. Caldwell be imprisoned in the said jail until the further orders of this House, and that the Speaker do issue his warrant accordingly.

Assembly Journal, 1824, pages 1265, 1266.

November 18, 1824.

Committee desires attendance of Mr. Caldwell, and the jailor is directed to attend with him before committee.

A communication from John Sudam, Esq., was read in the words following, to wit:

SIR.—I am directed by the joint committee of the Senate and Assembly, appointed to inquire into the means made use of to procure the incorporation of the Chemical Bank, to request that the honorable the Assembly would order that William J. Caldwell (now in prison by order of the Assembly, for contempt), to appear before the said committee, to testify in regard to the means made use of for the purpose of procuring the passage of the bill incorporating the said bank; his testimony, in the opinion of the committee, being material. I have also the honor to inform you, that the committee at eleven this day will be ready to proceed to the examination of the said W. J. Caldwell.

Respectfully, your obedient servant,

JOHN SUDAM, *Chairman.*

Hon. RICHARD GOODELL,
Speaker of the Assembly.

Thereupon, on motion of Mr. Tallmadge,

Resolved, That the sheriff or keeper of the prison, in and for the city and county of Albany, be ordered and required to take and attend William J. Caldwell (now in custody by order of this House), before the joint committee of the Senate and Assembly, charged with an inquiry in regard to the Chemical Bank, in order that he may be examined and testify before such committee; and that the said William J. Caldwell be then remanded to the said prison until the further order of this House, and to be there kept in accordance to the first order for commitment.

Assembly Journal, 1824, pages 1274, 1275.

November, 19, 1824.

MR. CALDWELL BEFORE THE COMMITTEE.

A communication from John Sudam was read in the words following, to wit:

COMMITTEE ROOMS, ALBANY, *November 19th*, 1824.

SIR.—I am directed by the joint committee of the Senate and Assembly, to inform you that William J. Caldwell (now confined by the honorable the Assembly for a contempt), has appeared, before the committee, and candidly and frankly answered all the questions which were put to him by the committee. The committee think it their duty to inform you of this fact, that it may be taken into consideration by the honorable the Assembly.

Respectfully your obedient servant,

JOHN SUDAM, *Chairman.*

Hon. RICHARD GOODELL,
Speaker of the House of Assembly.

Ordered, That the same do lie on the table.

Assembly Journal, 1824, page 1288.

REPORT OF THE JOINT COMMITTEE.

Mr. Hubbard, from the joint committee of the Senate and Assembly, appointed in pursuance of the resolution of both branches of the Legislature of the State of New York, to inquire whether any corrupt and unfair practices were used for the purpose of obtaining an act of incorporation for the Chemical Bank, and to inquire into the conduct of the agents of that application, and of all circumstances attending the passage of the bill, reported:

That they have been diligently employed since their appointment, in performing the duty assigned to them by the two branches of the Legislature. The committee were well satisfied that the dignity and character of the Legislature, the honor of the State, and the sentiments and feelings of the public, required a full and thorough investigation of the subjects submitted to their examination, and they have, to the best of their ability, performed a trust no less delicate than important in any respect in which the subject-matter of the resolution may be considered. In the course of their examination they have entered very fully into the *spirit* of the resolution by which the committee was raised, as well for the honor of the Legislature, as from a full conviction that no member of either House would shrink from, but rather court a full and satisfactory inquiry.

The charges of corruption or unfair means in procuring the charter of the bank in aid of the Chemical Manufacturing Company originated, as is well known, from a disclosure made by William J. Caldwell, of the city of New York, who was an agent in this city last winter for procuring banking privileges to the said manufacturing company. Mr. Caldwell was the avowed agent of Mr. Morrison, the principal, and is admitted by Mr. Morrison to have been employed by him to assist in procuring the passage of the bill. Caldwell is the only person who has brought a charge against any member of either branch of the Legislature of corruptly giving their vote for the Chemical Bank. In the opinion of the committee, their duty (under the concurrent resolution) was to inquire,

1st. Has any member of either branch of the Legislature been influenced in his vote in favor of the bill by a reward or the hope thereof, either directly or indirectly?

2d. What was the conduct of the agents for that bank and the means made use of by them in procuring the act granting banking privileges to the said manufacturing company?

1st. It is hardly necessary to say that the only person who charges corruption in procuring this charter, either directly or indirectly, is William J. Caldwell, now in custody by order of the Assembly for a contempt. The committee having been furnished by the Attorney-General with the affidavit of Mr. Caldwell, heretofore made, proceeded to examine him in regard to all the facts within his knowledge or *belief* attending the passage of the bill. in question. Caldwell states that he was employed by Mr. Morrison, the applicant for the bank, in the fall of 1823, to solicit its passage through the Legislature, and was to receive $2,000 if the banking privileges were granted,

and he produces a written agreement signed by Mr. Morrison, of the date of seventh of February, 1824, as proof of the sum he was to receive. He says that he was to receive this sum of money for procuring the passage of the bill granting banking privileges *by fair and honorable means*, and he expressly swears that he knows of no unfair means made use of by himself, nor any offer of money, or the value of it, or the receipt of money, to vote for the bank, except the case of Mr. P. Spencer, of the Assembly, and *what Morrison told him* in regard to *Mr. Keyes* and *Mr. Brunson* of the Senate, which last charge will be hereafter noticed. The case of Mr. P. Spencer of the Assembly is this (as stated by Caldwell), that last winter, before the passage of the bill in question in the Assembly, and the day preceding that on which the question was to be taken in that House, Caldwell called on Mr. Spencer at the request of Mr. Morrison, who had understood that Mr. Spencer was about to leave the city on business, to persuade him to remain in town until the vote had been taken; that Mr. Spencer said he was opposed to banks, and that he must go to the northward to raise money from a friend or relation to meet his engagements; that Caldwell went back and told Morrison of this; that Morrison said if it was money Mr. Spencer wanted he could let him have it, and that he would go and see him; that Morrison went up to see Mr. Spencer, who lodged at Smith's, and on his return called on Caldwell at Mr. Gourlay's, and told him Mr. P. Spencer would stay and vote for his bill; that he (Morrison) was to let Mr. Spencer have the money, and Spencer was to use his influence with Mr. G. Smith, who lodged in the same room with Mr. Spencer, also to vote for Mr. Morrison's bill; that Mr. Spencer the next day voted for the bill, and used his influence afterwards in procuring its passage in the Senate; that previous to Caldwell's leaving this city for New York, and while the bank bill was pending in the Senate, Morrison handed him some bills to pay over to P. Spencer, who had just left Morrison, and was going over to the Capitol inn, kept by Mr. Benjamin; Morrison said he did not like to be seen paying money, for fear of suspicion; that Caldwell went to the inn, followed by Spencer, in the back room; and on counting the money, found it to be forty dollars; that he paid it to him and took his note, payable to J. C. Morrison; that Caldwell informed Spencer that the money came from Morrison; that shortly after, Caldwell went to New York; but before he went, P. Spencer asked him, in the Capitol, if Morrison was a man of honor, and could be relied on; Caldwell answered that he thought he was; that Mr. Spencer then recapitulated to him

all the former conversation about his going to the northward for money (as before stated by Caldwell), and that Morrison had promised him the money he wanted; that he had as yet paid him only forty dollars; that he had money to pay in Albany; that he could get none from Mr. Morrison; that the amount Morrison had agreed to let him have was $300; but he (Spencer) was afraid he would not perform. This conversation, Caldwell swears, was repeated by him to Morrison directly after; and that Morrison replied that he did not intend to let Mr. Spencer have any more unless the bank passed the Senate. Caldwell says that directly after this conversation he went to New York, and knew nothing more of the transaction, until, in New York, after the bill had passed, Morrison and himself, in making out the cost of the charter of the Chemical Bank, Morrison put down $300 as paid to Mr. Spencer; and he produced to the committee a list of names, with the sums annexed, which is set forth in his deposition. That this statement was made by Morrison to ascertain how much the charter of the bank had or would cost; Morrison said that although he had the note of Mr. P. Spencer for that sum, still it was understood that it was not to be collected. This charge, on the face of it, is a *formidable* one. But, on the other side, it is shown by the oath of Mr. Morrison that he never called on Mr. P. Spencer, at any time, and offered him the loan of any money for his vote; that he did not call on him the evening preceding the question being taken in the Assembly; that he never informed Mr. Caldwell that he agreed to loan money to Spencer; that Caldwell, at one time, after the bill had passed the Assembly, came to him and said that he wanted thirty-seven dollars or forty dollars for an individual; that he borrowed a part of the money from Mr. Mark Spencer, of New York, and that Caldwell returned to him Mr. P. Spencer's note for forty dollars; that Morrison asked Caldwell who P. Spencer was, and Caldwell answered, "the red-headed man;" that after the Chemical Bank had passed the Senate, Mr. P. Spencer requested Morrison to loan him money to make a payment which was very important to him; and that he (Spencer) had been disappointed in receiving money, for which loan he offered his note; that Morrison, after some delay, and having inquired into the state of the affairs of Mr. Spencer, advanced him $300, including the forty dollars before mentioned, for which Mr. Spencer gave his note, bearing date the *fifth of April*, 1824 — four days after the final passage of the Chemical Bank; that this loan was made in perfect good faith, a negotiable note taken, on interest, payable on demand; which note, Morrison swears, was entered on his

books in the ordinary course of business, and that it was given without any reference to the vote of Mr. Spencer, and without any previous understanding, expressed or implied, that Mr. Spencer was to receive any gratuity for his vote; and that this money was not paid in pursuance of any previous stipulation, but was a *bona fide* business transaction.

The evidence of Mr. Morrison is confirmed by that of Mr. M'Call, of the Senate, and Mr. G. Smith, of the Assembly, both of whom state that Mr. Spencer, from the commencement of the session of the Legislature, uniformly expressed himself favorable to the incorporation of the Chemical Bank. And to this is added the oath of Mr. P. Spencer, all of whom contradict Caldwell in one material fact, viz.: that Mr. P. Spencer was originally opposed to the passage of the bill incorporating the bank. The committee have dwelt on this case more largely than they otherwise would have done, as it appears to them the only one in the Assembly worthy of notice, and they have endeavored to give a faithful analysis of the evidence, and without pretending to give any direction on this subject to the honorable the Assembly. And they respectfully suggest as their opinion, that Mr. Spencer, however liable to the charge of indiscretion, has not, in fact or in intent, been guilty of any corrupt conduct in voting for the incorporation of the Chemical Bank. But they trust that his case will serve as a beacon, to warn all others under similar circumstances. Indeed, the committee cannot but believe that Mr. Spencer was induced to apply for this loan from the facility with which, and the low interest at which Mr. Caldwell stated money could be procured at New York. They consider it an imprudent act, liable to be misconstrued, but not one coupled with *guilt*. The committee are the more inclined to this opinion, because Mr. Caldwell's testimony has in other instances been impeached in the course of this examination. The case of Mr. Spencer closes the charges made by Caldwell in the Assembly, of *bribery and corruption*, or any unfair dealing.

The next charge of Mr. Caldwell extends to the Senate, and of his own knowledge Mr. Caldwell does not pretend to say that he knows of any fact or circumstance which could attach to any Senator any suspicion, nor does he believe that any or either of them were actuated or influenced by any improper motives, except in so much as he was informed by Mr. Morrison, his employer, he states that Mr. Morrison implicated of the Senate Dr. Greenly, Mr. Keyes, Mr. Wheeler, Mr. Brunson, Mr. Cramer, and the president of the Senate, General Root, as the persons to be benefited by the incorporation of his bank.

Such a charge could not be lightly treated by the committee, and they determined in their examination on this subject to go to the utmost extent of their power, under the concurrent resolution of the Senate and Assembly, to discover the truth or falsehood of this allegation. It being premised that Mr. Caldwell founded this charge wholly on the declaration of Mr. Morrison, except the interest stated by him to have been taken by Mr. Cramer, before the commencement of the session of 1824, it was natural for the committee to inquire from Mr. Caldwell whether he knew of any undue influence which had been made use of to command a vote in favor of the Chemical Bank in either branch of the Legislature. To which he answered, that he did not, of his own knowledge, know the fact, but only from the information of Mr. Morrison. He says expressly that he does not believe that Mr. Keyes or Mr. Brunson of the Senate ever received a cent of money on account of the Chemical Bank, and Mr. Morrison swears that the whole story of Caldwell in relation to what is alleged by Caldwell, that he (Morrison) said about any member of the Senate, is false, so far as he is connected with it, and that he (Morrison) never made or assented to any such list of sums of money paid or to be paid as is sworn to by Mr. Caldwell, and that his statement is wholly false in that respect. The charge of Mr. Caldwell that he suspected Mr. Cramer of the Senate of having an interest in the bank, appears to be most insisted upon by him. The committee indulged him in all his speculations on this subject, and they think it sufficient to say that from a review of all the evidence there is no reason to believe that Mr. Cramer had any interest, either directly or indirectly, in the incorporation of the Chemical Bank; that he was neither directly nor indirectly to be benefited by it. That he was from the beginning its advocate, is well known to the committee; but they cannot for a moment entertain the belief that he was in any way to be benefited by the passage of that bill, opposed as Caldwell is by the evidence of several respectable and unprejudiced witnesses. It is clear from the testimony of Mr. Morrison, Mr. Seely, Mr. Post and Mr. Stebbins, that Mr. Cramer holds no stock in that bank or any one in trust for him, and that he has never received any pecuniary reward is equally certain, and they consider the imputation on the motives of Mr. Cramer by Caldwell as one of those tricks which were resorted to either to extort money from the fears of Mr. Morrison or to procure for Caldwell and others a controlling influence in the bank. The committee are fully justified in this conclusion, because Caldwell himself says he does not believe either Mr. Keyes or Mr. Brunson ever

received or were to receive a cent in money, although he swears Morrison so told him, and they stand in the list produced by him, as made up by Morrison and himself (as he swears), one for $1,000 and the other at $2,000. The committee have noticed this case the more particularly because Caldwell is the only person who has thought proper to suspect Mr. Cramer of a pecuniary interest in the bank. All the other witnesses unite in saying that Mr. Cramer's efforts for the bank originated in pure and honorable motives. Nor can it be denied that a person, appearing as Mr. Caldwell does before the public, to entitle him to credit, ought to fortify his evidence by something more than his declaration under oath. He is wholly unsupported by any testimony, either direct or circumstantial, and the committee consider it due to Mr. Cramer to say that they are unanimously of opinion that the imputation against him is wholly without foundation. They also find the charges against General Root, Mr. Wheeler, Mr. Brunson, Mr. Keyes and Dr. Greenly to be wholly without foundation.

In the course of the investigation it was found that a rumor had gone abroad from Colonel John P. Decatur in regard to Colonel Stranahan of the Senate having been influenced in his vote on the Chemical Bank; Colonel Decatur being out of this State, he could not be reached by process of subpœna. The committee have, however, examined Mr. Hedden, of New York, on the subject of the charge, by which examination it will clearly appear, in connection with the evidence of Mr. Morrison, and the note of General Robert Swartwout to Morrison, that the vote of Colonel Stranahan was alleged by Decatur to have been procured by him, as a pretext to induce Morrison to pay him $5,000. Colonel Stranahan voluntarily appeared before the committee, and his examination is herewith transmitted. The note from Decatur to him bears date *two* days after the Chemical Bank had passed, and is of such a character as to induce the committee to believe that Decatur expected to derive some personal benefit from writing it, at the expense of Colonel Stranahan, by alleging to Morrison that he had made engagements for $1,000. The testimony of Mr. Hedden fortifies this presumption, and his evidence, as well as that of Colonel Stranahan, shows most clearly that the note of Decatur to him had no connection with his vote. It having also been surmised, that a bond or obligation had been given to Colonel McIntyre, of the Senate, by Morrison, promising a clerkship in the bank, if it passed the Senate, the committee inquired into it. The simple transaction is, that a Mr. Powers, from Montgomery, being in Albany, proffered to Mr. Morrison his aid in procuring the

charter for his bank, and that he should have a situation in it. Mr. Morrison gave him a certificate to this effect; which, after the bill passed the Senate, was handed by Powers to Colonel McIntyre, to be kept. The fact being well known, from the commencement of the session, that Colonel McIntyre was in favor of this bank. Colonel McIntyre showed the paper to the chairman of the committee, and is ready to produce it to the Senate. The committee did not deem it necessary to examine him, although he wished to be examined, if the committee should deem it proper. It also appeared that Evan J. Elmendorf, a brother-in-law of Mr. Sudam, of the Senate, had a clerkship in this bank. At the request of Mr. Sudam, John Radcliffe was examined, as to the manner in which his appointment was procured. Elmendorf had married a niece of Radcliffe, and it appears clearly that Mr. Sudam had no knowledge of, or expectation of, this appointment; nor was it in any way intimated to him that Elmendorf was to receive any appointment, either directly or indirectly, but that it was procured by Radcliffe. The committee deemed it their duty to inquire into every surmise which had been made, and which reached the committee, or any one of them; and they congratulate the Senate that they can say, unanimously, that there is no reason to suspect, or believe, that any member of that body voted for the bank from improper or interested motives, or for reward, or the hope of it, either directly or indirectly. The committee are fully convinced, from their examination, that a combination of men, at Albany, last winter, from different parts of the State, and emphatically denominated "The Lobby," by impure and corrupt practices among themselves, and by pretense of influence over particular members of the Legislature, have given currency to the numerous reports, as to the causes which influenced the vote of members of the Senate and Assembly, wholly and utterly destitute of truth; and the scene of depravity which has been disclosed to them, as to the means made use of by the "Lobby," to extort money from applicants for bank charters, can hardly be credited, had not some of them sanctioned it by their own oaths. And the committee have reason to believe, and do believe, the rumors of corruption in the Legislature, in regard to the Chemical Bank, were set afloat in the present instance, knowing them to be unfounded, with a view of extorting money from Mr. John C. Morrison; and when the whole facts are disclosed, they firmly believe the Legislature and public will agree with them in their opinion.

Before, however, they proceed to this disclosure, the committee regret that they have to present to the Senate John Bryan, their

door-keeper, as liable to the severe animadversion of that body. His case is this: It clearly appears that upon an implied understanding, before the passage of the Chemical Bank, he demanded from Mr. Morrison, and received (after the passage of that bill in the Senate) $1,000, which he says was for his services in showing the medicine of Mr. Morrison's manufacture, and that the $1,000 was a voluntary gift by Mr. Morrison to him. He is, however, contradicted in the statement by Mr. Morrison and by Mark Spencer; and it is evident, from the whole tenor of his own testimony, as well as that of others, that he joined the Lobby in their practices to force Morrison into the payment of money for his (Bryan's) good will. He admits himself that, previous to the passage of the bill in the Senate, he made a distinct agreement in favor of his son William, for a sum of money and a situation in the factory. He denied to witnesses that he had received any money from Mr. Morrison (after he had in fact received it), as is stated in the evidence of Mr. Gourlay. The amount paid to him for the services performed by him, and the whole aspect of the transaction, clearly shows to the committee that he has made use of his official station to extort money from a fair applicant to the Legislature; that he has endeavored to interfere in the business of the Legislature, and offered himself and his services as the subject of barter and sale. Such a man, in the opinion of the committee, ought not to be permitted any longer to hold a station near the Senate.

The committee beg leave to remark that in the early part of their investigation, they examined Mr. Thurlow Weed, of Rochester, who was in this city a portion of the last winter. By his evidence it would appear as if Mr. Birdsall, of Chenango county, was acquainted with facts which could or might implicate Mr. Blakely of the Assembly. The committee immediately sent for Mr. Birdsall, and the time having arrived in which he might have reached this city, they have considered it proper to examine Mr. Blakely himself in regard to the transaction, and they are fully satisfied by his oath, as well as the previous examination of Mr. Morrison, that there are no grounds of suspecting Mr. Blakely of having been directly or indirectly benefited by the passage of the Chemical Bank. Under such circumstances, the committee could not delay their report to the Legislature. In the examination of Mark Spencer, one of the directors of the Chemical Bank, it will be perceived that he gives it as his opinion that the $50,000 of reserved stock was intended, in part, for some member or members of the Legislature, and that it was held in trust for them. When the committee heard this evidence, from so respecta-

ble a source, they did consider it their duty to investigate it in all bearings.

The evidence, however, of Mr. Seely, Mr. Morrison, Mr. Stebbins and Mr. Post satisfactorily explains this transaction as a fund pledged to various friends of Mr. Morrison, and that he has availed himself of the opportunity with the Messrs. Posts generally to buy out the interests of those friends in this stock at a low rate, and all the persons are named in his examination.

It will be perceived that the testimony taken by the committee necessarily introduces the names of several persons who acted as agents for the Chemical Bank, and who come within the scope of the concurrent resolution. In the inquiry instituted by the committee to discover if any member of the Legislature had been improperly influenced in his vote, it became necessary to examine Mr. Morrison and the agents employed by him, and the evidence thus elicited is certainly far from creditable to any of the persons engaged, including Mr. Morrison, to see men holding judicial positions and others claiming rank in society congregate at the seat of government for the purpose of letting themselves out for such rewards as may be extorted from the fears or the hopes of applicants to the Legislature must be a source of deep regret to all who respect the purity of legislation. But when it appears that the votes of members of the Legislature are actually pledged by the lobby without the most distant communication with them, and by these means rumors are spread abroad implicating the Legislature, and all for the purpose of extorting money from a desperate or a timid man, it becomes the sacred duty of the Legislature to expose to the public the names of the individuals who are guilty. The testimony discloses the names of William McDonald, now of Waterford; Colonel Mather, of Rensselaer; Aaron Hackley, late first judge of St. Lawrence; Halsey Rogers, first judge of the county of Warren; Ward B. Howard, of the city of New York; Isaac Kibbe, of Buffalo; Thomas Matchin, of Montgomery; General Carpenter, of Tioga; W. J. Caldwell, of New York; A. Moody, of New York; Cornelius Masten, of Penn Yan, and General Swartwout, of New York. The letter of General Swartwout to Morrison sufficiently shows the interest taken by him and the course pursued subsequently taken by Decatur must lead to conclusions which are irresistible of some understanding existing between the latter gentlemen. General Swartwout was duly subpœnaed, but cannot be found by the committee, he having left his lodgings on Sunday last, and Colonel Decatur is out of the limits of the State, as is proved before them. It

would be proper here to remark that Ward B. Howard and William J. Caldwell were engaged by Morrison to assist him in the fall of 1823, and that Howard expected a situation in the bank if the bill passed. The committee do not object to gentlemen attending the Legislature for the purpose of soliciting the passage of bills at a fair compensation, and where the county or city they represent has a direct interest in the question. What (in the opinion of the committee) constitutes the moral guilt and deserves to be severely censured is the practice of persons regularly meeting at Albany from various parts of the State, making it their business to lend their aid "for pay" to any application, and opposing applications unless they are paid, to be encouraged or tolerated, thus obstructing the regular course of legislation and casting suspicion as to the purity of legislative acts. And painful as it is to the committee, they are bound to say that some of the agents of the Chemical Bank are deserving of this censure, and they trust that this disclosure will put an end to what has been familiarly called the powerful legislation of the lobby. Powerful, indeed, must the consideration be which can induce men of standing in society to leave their families for a whole winter and devote themselves for hire to the will of their employer. Such practices, however, are as disreputable to the person who employs as the persons employed. And the committee ought not to screen Mr. Morrison from their censure unless it should be believed from the evidence that he was driven into the measures he took and the promises of money he made by the arts and devices of the lobby, and this there is certainly strong reason to suspect, since men holding such stations in society as some of those above named are induced to lend their services to procure the passage of bills in which they are not personally interested. It is perhaps due to Mr. Morrison to state that he requested to appear before the committee by counsel and that the committee declined granting such leave, and so informed the counsel of Mr. Morrison by letter.

The committee have presented, with as much clearness and perspicuity as time would permit, an analysis of the testimony taken by them, and it remains for the Senate and Assembly respectively to adopt such measures as may comport with the honor and dignity of both branches of the Legislature on the evidence reported.

DOCUMENTS ACCOMPANYING THE REPORT OF THE JOINT COMMITTEE ON THE CHEMICAL BANK.

Interrogatories to be administered to witnesses examined under and by virtue of a joint resolution of the Senate and Assembly of the State of New York, passed the 16th November, 1824.

1st. Do you know of any corrupt or unfair means or practices on the part of the agent or agents, any or either of them, of the Chemical Bank, for procuring the passage of the said bank, in the Legislature, in the winter session of 1824, or any offer of money by them, or either of them, or by any person or persons in their behalf, directly or indirectly, made or offered to any member of either branch of the Legislature, to induce them, or either of them, to vote for the incorporation of the said Chemical Bank?

2d. Do you or do you not know, or are you acquainted with any offer made, either directly or indirectly, to any member of either branch of the Legislature, promising them, directly or indirectly, or any person or persons for their use or benefit, or for the use or benefit of any or either of them, directly or indirectly, any sum or sums of money, or stocks, or loan or loans of money, to induce them, or any or either of them, to vote for the incorporation of the Chemical Bank?

3d. Do you know of any person or persons offering such rewards as are set forth in the preceding interrogatory to any member of either House of the Legislature, during the session in which the Chemical Bank was incorporated? If yea, who were the persons to whom such offer or offers were made; whether the same were or were not accepted or rejected; was or was not any money offered or refused, or the value of money in bills, bonds, notes, loans or otherwise, to induce any one or more members of either branch of the Legislature to vote for the incorporation of the said Chemical Bank? If yea, to what person or persons; was or was not such offer accepted or refused, and to whom was such offer or offers made, and what was the amount of such offer or offers, to whom made, and when; and when was the money or the securities for the payment of the money delivered, and to whom, and for whose use?

4th. Was there any combination or agreement between the person or persons applying for the Chemical Bank, and any other bank then pending before the Legislature, by which the aid or assistance of any members of either branch of the Legislature should be given to the Chemical Bank, in case they would lend their aid to the passage of any other bank? If yea, disclose the names of such persons.

5th. Do you know, or have you reason to believe, that the door-keepers, or either of them, sergeants-at-arms, or either of them, or any other officer of either branch of the Legislature, has either directly or indirectly received any sum of money, or any promise of the payment of money, by bond, bill, note, or otherwise, either for himself, or in trust for any member of either branch of the Legislature, either directly or indirectly, or in trust by any other person, either for his own use, in part or the whole, or in part or the whole for the use and benefit of any member of either branch of the Legislature, whether in possession, remainder, or reversion, or before or after the passing of the law incorporating the Chemical Bank?

6th. Do you know of any matter or thing, by which any member of either branch of the Legislature of this State, being members at the time of, and before and after the incorporation of the Chemical Bank, or any officer or servant of either branch of the Legislature, have either directly or indirectly received any fee or reward, or the promise thereof, or the offer of a fee or reward, or the promise thereof, to induce them to procure a vote from any member of either branch of the Legislature, in favor of the act incorporating the said Chemical Bank?

Assembly Journal, 1824, pages 1317 to 1324 both inclusive. See testimony and documents, pages 1324 to 1351, both inclusive.

Thereupon,

Ordered, That double the usual number of copies of the said report be printed for the use of the Legislature.

Ordered, That double the usual number of copies of the letters of W. J. Caldwell to the Hon. J. C. Tillotson, and of Ambrose Spencer to his honor the Speaker of this House, be printed for the use of the Legislature.

WILLIAM J. CALDWELL BROUGHT TO THE BAR OF THE HOUSE AND DISCHARGED.

On motion of Mr. Tallmadge,

Resolved, That William J. Caldwell be brought to the bar of this House, and that he thereupon be discharged. Thereupon, the sergeant-at-arms brought the said William J. Caldwell to the bar of this House, who was accordingly discharged.

Assembly Journal, 1824, page 1351.

In the Matter of the Breach of Privilege of Alvah Beebe.

OFFER OF BRIBE IN THE INCORPORATION OF THE TOMPKINS COUNTY BANK.—ARREST OF ALVAH BEEBE.

ASSEMBLY CHAMBER, ALBANY, *February* 15, 1833.

Mr. Speaker announced that, pursuant to the mandate contained in the warrant issued by order of the House, on the 11th inst., the sergeant-at-arms made the following return:

"By virtue of the within warrant, I have arrested Alvah Beebe, therein named, and now have him in my custody at the bar of the House of Assembly.

"CORNELIUS A. WALDRON,

"*Sergeant-at-Arms of the Assembly.*

"*February* 15, 1833."

SELECT COMMITTEE APPOINTED.

Thereupon, on motion of Mr. Spencer,

Resolved, That a select committee be appointed to conduct the further proceedings which may be necessary in relation to the alleged contempt and breach of the privileges of this House by Alvah Beebe.

Ordered, That Mr. Spencer, Mr. Burwell and Mr. Herttell be the said committee.

On motion of Mr. Spencer,

Resolved, That the injunction of secrecy in relation to the proceedings heretofore had by this House upon the alleged contempt and breach of the privileges of this House by Alvah Beebe, be removed; and that the report of the select committee on that subject, made on the 11th of February instant, together with the testimony accompanying the same, be printed.

IN ASSEMBLY, *February* 15, 1833.

CONFIDENTIAL JOURNAL OF THE PROCEEDINGS OF THE ASSEMBLY OF THE 11TH FEBRUARY, 1833, PUBLISHED PURSUANT TO A RESOLUTION OF THE 15TH FEBRUARY.

Mr. Spencer, from the select committee appointed to ascertain the author of a letter addressed to John De Mott, Esq., a member of this House, and to report their opinion as to further proceedings to be had in relation to the said letter, reported, that the committee have taken the testimony of John De Mott, Ira Tillotson, Thomas Bishop, Daniel B. Swartwood and Joshua Lee, Esqs., members of this House, in relation to the subject on which they are directed to inquire and report

to the House, which testimony is reported herewith. The committee are unanimously of opinion, from the evidence adduced, that Alvah Beebe, of Ithaca, in the county of Tompkins, is the author and writer of the letter to Mr. De Mott.

With respect to the further proceedings which should be had, your committee are of the opinion that the letter referred to them contains a direct offer of a bribe to a member of this House, and is an attempt, by corrupt means, directly to influence a member of this House in giving his vote upon an application, then pending in the House, for the incorporation of a bank by the name of the Tompkins County Bank. They think it impossible for any one who reads the letter to give it a different construction; and they can not hesitate to pronounce it a gross and flagrant contempt and breach of the privileges of this House.

The offender appears to be a man of some standing in community, and a sincere and zealous advocate of the application for the Tompkins County Bank; and his offense must therefore at present, be presumed to be intentional.

Under such circumstances your committee are of opinion that it is due to the purity of legislation, to the character of this House, and to that confidence which the people of this State should repose in the integrity of their representatives, that the offender in the present case should be brought to answer for his conduct, and should be dealt with in such a manner as to repress and prevent similar attempts in future.

The committee, therefore, unanimously recommend to the House the adoption of the following resolutions:

Whereas, It satisfactorily appears to this House, by the testimony of John De Mott, Ira Tillotson and Thomas Bishop, Esqs., members of this House, taken on oath, by a select committee, and reported to this House, that Alvah Beebe, of Ithaca, in the county of Tompkins, in the month of January last, addressed an anonymous letter to John De Mott, Esq., a member of this House, requesting his aid in favor of an application then pending for the incorporation of a bank by the name of the Tompkins County Bank, and offering to him ten thousand dollars of the stock of the said bank, and threatening an opposition to other bank applications, in case the said application failed; and whereas, the said letter is an offer to bribe a member of this House, and is an attempt by corrupt means, directly to influence such member in giving his vote upon the aforesaid application, and is a contempt of this House, and a breach of its privileges; therefore,

Resolved, That the Speaker of this House do issue his warrant to

the sergeant-at-arms, commanding him to arrest the said Alvah Beebe, and to bring him before this House, to answer for the said contempt and breach of the privileges of this House.

Mr. Speaker put the question whether the House would agree to the said resolution and recital, and it was decided in the affirmative.

JOURNAL OF THE SELECT COMMITTEE APPOINTED BY THE HOUSE OF ASSEMBLY TO ASCERTAIN THE AUTHOR OF A CERTAIN LETTER TO JOHN DE MOTT, ESQ., A MEMBER OF THAT HOUSE.

Saturday afternoon, 4 o'clock, the committee convened at Bement's Hotel, in the City of Albany.

Present—J. C. Spencer, Thos. Herttell, and Dudley Burwell.

John De Mott, Esq., a member of the House from the county of Seneca, being duly sworn, deposes, that a letter now exhibited to him, and which is hereto annexed, marked A, was received by him perhaps about two or three weeks since: it was brought to his room, according to his best recollection, by a servant, but it may have been left on his desk in the House; he has no knowledge of the person who brought the same, nor of the person who wrote it, and there is no circumstance within his knowledge to indicate the author.

Dr. Lee, a member of the House, and of the bank committee, was in the room of witness soon after receiving it, and witness casually mentioned it to him and Mr. Halsey of the Senate, who was present, and showed it to them. The next morning Dr. Lee requested witness to let him have the letter, in order to lay it before the committee, and witness handed it to him, with an injunction that no use should be made of it without the permission of witness. His motive in imposing this condition, was, that he thought the matter too contemptible for notice, and he did not wish to excite attention to himself. The letter was read in the House this morning, without his assent or knowledge.

JOHN DE MOTT.

Sworn February 9, 1833, before me.

J. C. SPENCER,
Chairman, etc.

Ira Tillotson, a member of the House from the county of Tompkins, being sworn, deposes that he is not sufficiently acquainted with the handwriting of the letter marked A, hereto annexed, to swear to the same. From a comparison of the handwriting of the superscription of the letter, with other letters seen and received by him, he thinks he can recognize the writer. Witness, on being required by the committee,

produces a letter which is hereto annexed, marked B, as one of those he has seen, and which he refers to, as being in a similar handwriting. From a comparison of the writing, he thinks a superscription of the letter to Mr. De Mott, marked A, was written by the same person who wrote the letter marked B, Alvah Beebe. Alvah Beebe resides in Ithaca. He is not in the city of Albany, and has not been during the winter, to the knowledge of witness. Beebe is in the flouring business. Witness has received several letters from Mr. Beebe on the subject of the application for a bank in Tompkins county, and among others, bundles of petitions, some of them sealed and others open, chiefly directed to members of the House. Witness was unacquainted with the contents of those which were sealed. Beebe appears to be a warm advocate for the bank

IRA TILLOTSON

Sworn February 9, 1833, before me.

J. C. SPENCER,
Chairman, etc.

Thomas Bishop, a member of the House from Tompkins county, being sworn, deposes that he is acquainted with Alvah Beebe; he is not particularly acquainted with the handwriting of the said Beebe, except what knowledge he has acquired from letters received from him since witness has been attending the Legislature. On examining the superscription of the letter to Mr. De Mott, marked A, witness says, that judging from letters he has seen from the said Beebe, he should think the direction of the letter to Mr. De Mott was in the writing of the said Beebe. Witness cannot say whether the handwriting inside of the letter is the same as the direction, but has no doubt that a part of it is. He has no doubt, in his own judgment, that the letter to Mr. De Mott is in the handwriting of Alvah Beebe. Witness received a number of letters, directed to members, under cover of a wrapper, in which was writing in the same hand as the letter to Mr. De Mott, requesting witness to deposit those letters in the post-office, which he accordingly did. Witness does not know that they were all sealed, but those which appeared to have priting on them were sealed. Witness and the other members from Tompkins, were unacquainted with the contents of the letters thus inclosed to them.

THOMAS BISHOP.

Sworn February 9, 1833, before me.

J. C. SPENCER,
Chairman, etc.

Daniel B. Swartwood, a member of the House of Assembly from Tompkins county, being sworn, deposes that he has a slight personal acquaintance only with Alvah Beebe, but has had no communication or correspondence with him during the present winter; he has not received any letters from him for distribution or otherwise, and has no knowledge of a letter to Mr. De Mott. Witness saw the letters received by his colleagues, Messrs. Tillotson and Bishop, and knew of their having distributed them, but did not know the contents of any of them. A part of those letters were sealed, and a part of them were not, and witness supposed they were all petitions for a bank at Ithaca. Witness saw some of them, that were of that description; these were not sealed.

D. B. SWARTWOOD.

Sworn February 9, 1833, before me.

J. C. SPENCER,
Chairman, etc.

Joshua Lee, a member of the House from Yates county, being sworn, deposes, that in a conversation with Mr. De Mott, at his room, he mentioned having received the letter marked A, and read it to witness. The next morning witness asked Mr. De Mott for the letter, with a view to show it to the bank committee; Mr. De Mott told witness he might have it, but did not wish his name used; that he considered it contemptible, and an imposition on him; witness stated that his object in getting it was to compare the handwriting with other letters on the same subject, to see if the author could be detected. Witness took the letter and handed it to Col. Litchfield, chairman of the bank committee. Mr. De Mott followed witness into the room where he was with Col. Litchfield, and remarked to him that he had no objection to the committee using the letter, but that it was not to be made public without his knowledge and consent. It was left with Mr. Litchfield, who left the city the day the report against the bank was made, and handed over his papers to Mr. Morris of the bank committee, who probably was not informed of the conditions on which it was left.

JOSHUA LEE.

Sworn February 9, 1833, before me.

J. C. SPENCER,
Chairman, etc.

(A.)

3,000 names.

DEAR GENERAL.—I see N. Burgh has a report, which is a similar case to ours; if we do not get one we shall oppose *some others*. Please do all you can for us, and have $10,000 of our stock; we need more than river counties; facilities, ha? We want your aid and your name with us. Orange county has two already.

(B.)

DEAL SIR.—Permit me to introduce to your acquaintance Mr. Tilotson, our village member.

I have only to add, that Mr. T., as well as our whole delegation, are firm partisans.

I am, dear sir, your obedient servant,

ALVAH BEEBE.

Hon. M. VAN SCHAICK, *Albany*.

P. S.—We feel *indebted* to *your* delegation.

ITHACA, *January* 8, 1833.

Resolved, That the report of the select committee on the subject of a letter addressed to John De Mott, Esq., a member of this House, the documents accompanying that report, and the proceedings of the House thereon, be deemed confidential, and not to be disclosed until so ordered by the House; and that the printing of said report and documents be suspended until otherwise directed.

Assembly Documents, 1833, vol. 3, No. 143.

COMMITTEE REPORTED, RECOMMENDING INTERROGATORIES.

February 16, 1833.

Mr. Spencer, from the select committee appointed to conduct the further proceedings which may be necessary in relation to the alleged contempt and breach of privileges of this House, by Alvah Beebe, reported, by respectfully recommending to the House the adoption of the following resolutions.

Resolved, That Alvah Beebe be brought to the bar of this House, by the sergeant-at-arms, this day at twelve o'clock, and that the following interrogatories be then put to him:

First. Are you the petitioner for the incorporation of a bank in the county of Tompkins proposed to be called the Tompkins County Bank? Have you endeavored to aid and assist in promoting the object of that application?

Second. Did you address copies of a printed petition in favor of that bank, to members of this House? Did you inclose such copies to Thomas Bishop and Ira Tillotson, Esqs., members of this House, from the county of Tompkins, to be by them distributed to the members to whom the same were addressed? Were any of the said copies sealed?

Third. Look upon one of the copies now shown to you, addressed to "General De Mott, Albany," and at the writing under the printed petition, and state whether the said address or direction and the said written matter, or either of them, were written by you?

Fourth. Was the said copy of a petition with the said written matter therein, sent by you to the said Ira Tillotson and Thomas Bishop, Esqs., or either of them, to be transmitted to General De Mott?

Fifth. By the address of the said copy of the petition to "General De Mott," did you intend John De Mott, Esq., a member of this House, from the county of Seneca? Were you previously acquainted, personally, with the said John De Mott, and how long have you been acquainted with him.

Sixth. What explanation can you offer for having sent the said copy of a petition, with the said written matter therein, to the said John De Mott?

Resolved, That the said Alvah Beebe be required to answer the said interrogatories orally, and that his answers be taken down by the clerk and read to him.

Resolved, That if the said Alvah Beebe, after hearing the said interrogatories, shall desire a copy of them, and time to answer them, this House will hear such application and decide; and if the said Alvah Beebe desires to present his own affidavit, or any other testimony, in explanation of his conduct, this House will receive the same.

Resolved, That the said Alvah Beebe remain in the custody of the sergeant-at-arms, by virtue of the warrant already issued, until he shall be discharged by the order of this House.

Mr. Speaker put the question whether the House would agree to the said interrogatories and resolutions, and it was determined in the affirmative.

ALVAH BEEBE AT THE BAR OF THE HOUSE.

Thereupon, the said Alvah Beebe was brought to the bar of the House, and the above interrogatories put to him by the Speaker.

The said Alvah Beebe desired a copy of the said interrogatories, and time until Tuesday next to make answer thereto.

On motion of Mr. Spencer,

Ordered, That time be granted the said Alvah Beebe until Tuesday next, at twelve o'clock at noon, to make answer to the said interrogatories.

Assembly Journal, 1833, pages 310, 311.

February 16, 1833.

On motion of Mr. Farrington,

Resolved, That the select committee appointed to conduct the proceedings on the part of this House against Alvah Beebe, for an alleged contempt, be instructed to inquire and report to this House whether any person or persons, and who, if any, have participated in the communications made to John De Mott and others, members of this House, with the purpose of improperly influencing the votes of the said members; and that the said committee have power to send for persons and papers.

Assembly Journal, 1833, page 313.

February 19, 1833.

REPORT OF COMMITTEE.

Mr. Spencer, from the select committee who were instructed by a resolution of the House to inquire and report whether any person or persons, and who, if any, have participated in certain communications made to John DeMott and others, members of this House, with the purpose of improperly influencing the votes of the said members, reported, and asked to be discharged from its further consideration.

IN ASSEMBLY, *February* 19, 1833.

REPORT OF THE SELECT COMMITTEE APPOINTED TO INQUIRE WHETHER OTHERS PARTICIPATED IN THE LETTERS OF ALVAH BEEBE, ETC.

The select committee, who were instructed by a resolution of the House, to inquire and report whether any person or persons, and who, if any, have participated in certain communications made to John De Mott and others, members of this House, with the purpose of improperly influencing the votes of the said members, report:

That after a careful and thorough examination of Alvah Beebe, the author of the communications alluded to, and after the examination of sundry other witnesses, your committee have not discovered any evidence to induce a belief that any person beside the said Beebe, has participated in those communications. It is most satisfactorily established that the members of this House from the county of Tomp-

kins, were entirely ignorant of the contents of the sealed letters transmitted through them, to different members of this House, until those letters were publicly read, and were not in any way knowing, or privy to their being written, or to the designs of their author. And the committee are entirely satisfied that the applicants for the Tompkins County Bank, who are among the most respectable men in that county, are not responsible for the conduct of Alvah Beebe, and are in no way implicated in the measures he adopted to aid that application. The subject scarcely admits of a resolution being submitted to the House, and the committee can therefore only ask to be discharged from its further consideration.

JOURNAL OF THE SELECT COMMITTEE, APPOINTED TO INQUIRE WHETHER ANY PERSONS HAVE PARTICIPATED IN THE COMMUNICATION MADE TO JOHN DE MOTT AND OTHERS, MEMBERS OF THIS HOUSE, WITH THE PURPOSE OF INFLUENCING THE VOTES OF THE SAID MEMBERS.

February 18, 1833, half-past three o'clock, the committee convened at Bement's Hotel; present—J. C. Spencer, Dudley Burwell, and Thos Herttell.

Alvah Beebe, being sworn, deposes, that no person participated in the letter to John De Mott, written by the deponent (the subject of the present inquiry), beside himself; no one who knew of his intention to write such a letter, and believes that no one knew of his intention to write to Mr. De Mott; that letter was not shown to any person after it was written, and no one knew its contents. Witness is shown letters to Mr. Litchfield, Mr. Wooster, Mr. Baker, Mr. Lee and Mr. Morris, and says that no person participated in the writing of those letters, or either or any of them; they were not written on the suggestion of any person, nor were their contents known to any other person. All the letters referred to, including that to Mr. De Mott, were sealed by witness and sent to Mr. Bishop and Mr. Tillotson, to be by them put in the post-office at Albany; witness did not apprise those gentlemen of the contents of the several letters, and has no reason for supposing those gentlemen were acquainted with their contents. There were a number of the petitions directed by witness to members of the House, and sent to Mr. Bishop and Mr. Tillotson, to be put in the post-office, with the exception of a few, probably five or six; these were unsealed and open; those only were sealed, which were written upon. Witness cannot say that he has written any letters to Mr. Bishop, Mr. Tillotson or Mr. Swartwood, respecting the course to be pursued in aiding the application for the

Tompkins County Bank; has written them, but cannot recollect that any allusion was made in his letters, to the course to be pursued by them in relation to the bank, although he may have done so. Witness never sent any names for commissioners to the bank committee, but made a selection, from the names of the petitioners of some forty or more names of the most distinguished men in that county; this list witness sent to a friend in Albany, to show him what friends the bank had, and to obtain his aid. Witness did not personally know the gentleman to whom he sent the said list, although he knew him by reputation. It is possible that he sent another list of names to the amount of forty or more, to the bank committee, but he has no recollection of having done so. Since his arrival in Albany, he has not seen any letter from himself to Mr. Tillotson or Mr. Bishop.

ALVAH BEEBE.

Sworn February 18, 1833.
before me.

J. C. SPENCER,
Chairman, etc.

Ira Tillotson, a member of the House of Assembly from the County of Tompkins, being sworn, deposes that he was not acquainted with the contents of any of the sealed letters sent to him and Mr. Bishop by Alvah Beebe, to be put in the post-office, until they were read in the House of Assembly; does not know of any person having participated with Beebe in writing those letters, or any of them, or of any person being acquainted with their contents before they were delivered to the persons to whom they were directed. The day before they were read in the House, he heard there were some improper letters in the hands of the committee. Witness received several letters from Beebe, perhaps three or four, some of them on the subject of the bank; one of them directed him how to manage, and to talk of opposition to Gen. Hathaway; those letters were destroyed, on the advice of Mr. Swartwood, supposing that they were of no further use; and that all that was wanted of them was to identify their handwriting. Cannot recollect when those letters were destroyed, but thinks it was some two or three days since. Has no particular recollection of having talked with Gen. Hathaway about the Tompkins County Bank, though he has probably said to Gen. H. that it was a bank much desired by the people of Tompkins, and a deserving application; he never talked of opposition to Gen. Hathaway. Witness has written nothing to Beebe on the subject of the bank, except that he may have said to

him there was no prospect of its success. Witness never had any other but very general and loose conversation with Beebe or with any person about the bank, previous to witness' leaving home.

IRA TILLOTSON.

Sworn February 18, 1833, before me.

J. C. SPENCER,
Chairman, etc.

Thomas Bishop, a member of the Assembly from Tompkins county, being sworn, deposes that he was not acquainted with the contents of any of the sealed letters sent by Alvah Beebe to himself and Mr. Tillotson, until they were read in the House of Assembly; does not know of any person having participated with Beebe in writing their letters, or advising them, or of any person being acquainted with their contents previous to their being delivered to the persons to whom they were directed. He has no knowledge of any applicant for or friend of the bank, or any person living in or about Ithaca being in any way implicated in the writing of those letters, or privy to their being written, or any letters of a similar character. He received one or more letters from Beebe, on other subjects, and a wrapper around the letters Beebe had sent him to be put in the post-office; which he destroyed. The wrapper merely requested him to deposit the letters in the post-office. He may have seen the letters of Beebe to Mr. Tillotson, but has no distinct recollection of their contents.

THOMAS BISHOP

Sworn February 18, 1833, before me.

J. C. SPENCER,
Chairman, etc.

Luther Gere, of Ithaca, in the county of Tompkins, being sworn, deposes that he never knew of Alvah Beebe writing any letters to members of the Legislature in aid of the application for the Tompkins County Bank, until after his arrest, and knows not of any person having participated in or been privy to any such letters. Witness took no part in the application, either for or against it. Beebe took an active, forward part in supporting the application, but presumes he was not employed by any one for that purpose. From his knowledge

of Beebe, witness would hardly expect the friends of the application to engage his services.

LUTHER GERE.

Sworn February 18, 1833, before me.

J. C. SPENCER,
Chairman, etc.

David Woodcock, being duly sworn, says that he resides in Ithaca, has been friendly to the application for the Tompkins County Bank, although he was not one of the signers. Witness did not know of Beebe's having written any letters, or sent any papers to members of the Legislature on the subject of the bank, until since his arrest, and does not know of any person having participated in or being privy to such letters. Except what witness has heard from Beebe, he never heard his name mentioned in connection with the bank. From his knowledge of Beebe he should not suppose the applicants of the bank would engage his services in aid of it. In November or December last, Beebe told witness that he was anxious for a bank, and this was the amount of all he had said to him about it.

D. WOODWARD.

Sworn February 18, 1833, before me.

J. C. SPENCER,
Chairman, etc.

Assembly Documents, 1833, vol. 3, No. 169.

COMMITTEE DISCHARGED.

Mr. Speaker put the question whether the House would agree to discharge the committee from the further consideration of the subject embraced in the said resolution, and it was determined in the affirmative.

On motion of Mr. M. Patterson,

Resolved, That Alvah Beebe have leave to file written answers on oath to the interrogatories addressed to him by this House on the 16th instant.

On motion of Mr. Patterson,

Resolved, That Alvah Beebe be allowed to appear at the bar of this House with counsel.

ALVAH BEEBE AT THE BAR OF THE HOUSE.

The sergeant-at-arms then brought Alvah Beebe to the bar of the House.

Thereupon, Mr. Speaker put to the said Alvah Beebe the several interrogatories adopted by this House on Saturday last, to which the said Alvah Beebe made answers in writing as follows:

ANSWERS OF ALVAH BEEBE.

In the matter of Alvah Beebe respondent, before the Honorable the Assembly of the State of New York.

The answer of Alvah Beebe to the several interrogatories addressed by the Honorable the Assembly, to this respondent.

First. This respondent says, that he is an applicant, with many other persons, for the incorporation of a bank in the county of Tompkins; and has endeavored to aid and assist in promoting the object of that application among his friends and neighbors in the county of Tompkins, where this respondent resides.

Second. I did address copies of the printed petitions for the incorporation of the bank, to several members of the Honorable the Assembly; I also inclosed copies of such petition to Thomas Bishop and Ira Tillotson, Esqs., members of this House from the county of Tompkins, to be, by them, put into the post-office for the members to whom they were addressed; and it is probable that some five or six of them were sealed.

Third. The copy of such petition shown to me, addressed to General De Mott, Albany, and the written matter thereunder written, was addressed by me and in my own handwriting, to General De Mott, and the address or direction thereon, and the writing thereunder written, is in my own handwriting, and was written by me.

Fourth. I do not recollect whether the said copy of the said petition, with the said written matter thereunder, was sent by me to Ira Tillotson and Thomas Bishop, Esqs., or either of them, to be transmitted to General De Mott or not.

Fifth. By addressing the said copy of said petition to General De Mott, I meant John De Mott, Esq., a member of this House from the county of Seneca, with whom I was previously acquainted, personally, and have known him by reputation about twelve years.

Sixth. This respondent, in answer to the sixth interrogatory says, that he is extensively engaged in the flouring and milling business; having invested by himself and associates a capital of from fifteen thousand to twenty thousand dollars; and having use during the season for purchasing the produce of the country, for a much larger capital, and feeling strongly the necessity of having more facilities conveniently located to carry on this, respondent's business, this respondent asso-

ciated himself with others, to make an application to the Honorable the Legislature to incorporate a bank, to be located in the village of Ithaca, where this respondent resides.

This respondent feeling a deep, personal interest on the success of such application, and understanding that a great number of such applications were pending before the Legislature from almost every county of the State, and believing by general report that a prevailing disposition among the business part of the community existed to obtain bank stock, and the privileges conferred thereby to those possessing that species of property; and it having generally been asserted, and by many believed, that heretofore, and recently, many gentlemen, members of the Legislature, who had in charge applications of their constituents for new banks, were themselves, either directly or indirectly interested in the success of such applications; and this respondent knowing from information and hearsay, that many gentlemen of either branch of the Legislature heretofore, have not deemed it improper or dishonorable to become large stockholders in banks, created by the aid of their votes; and this respondent knowing the Hon. John De Mott to be a gentleman of high character, and a merchant of wealth and standing, above suspicion in the community where he resides, and residing about twenty miles from Ithaca; and being informed that General De Mott and his constituents desired to obtain a bank for their accommodation and benefit to be located at Ovid; and it being understood by this respondent and associates at Ithaca, that the application for such bank at Ovid had been reported upon unfavorably by the Honorable the Bank Committee of the Assembly; and it having been previously suggested to this respondent by the friends and relatives of General De Mott, residing at Ithaca, that in case such application for a bank at Ovid should not receive the favorable consideration of the Legislature, General De Mott, would most probably be willing to aid in the Tompkins county application in a proper manner, and take an interest therein, and invest about ten thousand dollars in the stock; and this respondent believing that General De Mott's business at a bank would be very large and profitable, being generally a purchaser of produce to a large amount, this respondent did believe that his association in the bank, applied for by this respondent, and associates would prove highly beneficial to such bank; and this respondent, under all these considerations and circumstances, wrote the memorandum under the printed petition addressed by this respondent to General De Mott; and this respondent says, that when he wrote such memorandum, he intended to

invite General De Mott, bona fide and in good faith, to become a subscriber to the stock of said bank to the amount of $10,000, which his friends and relatives suggested he might probably wish to do; also, to aid in the success of the application before the Legislature, as other honorable gentlemen often do, as this respondent is informed and believes.

But this respondent denies all intention whatever, to offer to General De Mott, or any other person, any unusual, corrupt or improper inducement, in order to influence his action or vote in the Honorable the Assembly; nor was this respondent sensible at the time he noted the memorandum on the said printed petition addressed to General De Mott, that there was any impropriety in so doing, or that such memorandum would be offensive either to General De Mott or the Honorable the Assembly; and this respondent acknowledges his deep regret that it should have been so considered.

This respondent asks leave to add in explanation of that part of the memorandum which indicates opposition to other applications in case of failure of the respondent's and associates' application, that he is informed that such practice (whether improper or not), has generally obtained in very many instances, heretofore, with the members of the Legislature themselves, being a right which they and all others have secured to them by the free institutions of this State, when exercised for beneficial and proper purposes, and from good motives.

With this explanation and apology, this respondent submits himself to the Honorable the Assembly (and the community of which he is a member), and asks to be discharged, and that his reputation, rights and privileges may be secured and continued unto him unimpaired.

ALVAH BEEBE.

CITY AND COUNTY OF ALBANY, *ss:*

Alvah Beebe, the respondent in the foregoing answers to the interrogatories propounded to him by the honorable the Assembly, says, that he has read such answers and knows the contents thereof, and the statement and facts therein set forth are just and true, according to the best information and belief of this deponent; and further saith not.

ALVAH BEEBE.

Sworn this 19th of February, 1833, before me,

S. CHEEVER,
Commissioner of Deeds.

On motion of Mr. Bennett, further proceedings in the matter relating to the alleged contempt and breach of privilege of this House by the said Alvah Beebe were suspended until to-morrow at twelve o'clock.

Assembly Journal, 1833, pages 328, 329, 330 and 331.

February 20, 1833.

On motion of Mr. Spencer,

Resolved, That upon Alvah Beebe being brought to the bar of this House, this day, the Speaker do inquire of him whether he has anything further to offer to this House on the subject of his alleged contempt and breach of the privileges of this House.

A communication from Alvah Beebe was received and read in the words following, to wit:

ALBANY, *February* 20, 1833.

The Hon. CHARLES L. LIVINGSTON, *Speaker of the Assembly:*

SIR.—Inclosed is a communication to the honorable the Assembly, which I beg you to do me the favor to lay before that honorable body.

With great respect, I am, sir, your obedient servant,

ALVAH BEEBE.

To the Honorable the Assembly of the State of New York:

GENTLEMEN.—Being brought before your honorable body to answer for an alleged contempt and breach of privilege, I respectfully solicit the privilege of being heard before your honorable body by counsel.

I am, gentlemen, with great deference and respect,

Your obedient servant,

ALVAH BEEBE.

ALBANY, *February* 20, 1833.

On motion of Mr. Spencer,

Ordered, That permission be granted to the said Alvah Beebe to be heard by counsel.

Thereupon the said Alvah Beebe was brought to the bar of the House, and having been heard, by Abijah Mann, Jr., his counsel,

Mr. Burwell offered for the consideration of the House a resolution in the words following, to wit:

Resolved, That Alvah Beebe has been guilty of a contempt, and a breach of the privileges of this House, and that he be brought to the

bar of this House at twelve o'clock to-morrow, and there publicly reprimanded by the Speaker in the presence of the House.

In proceeding upon the same, Mr. W. M. Patterson made a motion, that the House should agree to amend the said resolution by striking out all the same after the word "Resolved," and inserting the following:

"That the answer of Alvah Beebe to the interrogatories propounded to him by this House, on the subject of his letter to General De Mott, and the explanation of said answer by his counsel, be deemed satisfactory to this House; and that, therefore, the Speaker admonish the said Alvah Beebe against any such indiscretion in future, and that he be discharged."

And then the House adjourned until eleven o'clock to-morrow morning.

Assembly Journal, 1833, pages 239, 240.

February 21*st*, 1833.

The House then proceeded to the consideration of the resolution offered by Mr. Burwell, and the amendment thereto offered by Mr. W. M. Patterson, as entered on the journal of yesterday; and in proceeding upon the same, Mr. Myers made a motion that the House should agree to amend the amendment by striking out all of the same after the word "that," and inserting the following:

"Alvah Beebe, in writing the memorandum addressed to John De Mott, Esq., a member of this House, was guilty of a highly censurable interference with the privileges of this House; but that from the answer of the said Alvah Beebe, as verbally explained by his counsel, this House is satisfied that the said censurable act of the said Alvah Beebe, was the offspring of thoughtless indiscretion and inconsiderateness, unaccompanied by any real intention of committing an offense. Therefore,

"*Resolved*, That with the above censure of this House upon the conduct of the said Alvah Beebe, the said Alvah Beebe be discharged."

Debates were had upon the said motion of Mr. Myers, and the question being put whether the House would agree thereto, it was determined in the negative.

Nays, 69. Ayes, 34.

Mr. Wager made a motion that the House should agree to amend the said amendment by striking out all of the same after the word "That," and inserting the following:

"Alvah Beebe be acquitted of the contempt with which he stands

charged at the bar of this House, and that he be immediately discharged out of the custody of the sergeant-at-arms."

And the question on the same being divided, the first clause thereof was read in the words following:

"Alvah Beebe be acquitted of the contempt with which he stands charged at the bar of this House."

Debates were had thereon, and the question being put whether the House would agree to the said clause, it was determined in the negative.

Nays, 90. Ayes, 11.

Thereupon Mr. Speaker put the question whether the House would agree to the remaining clause of the said amendment offered by Mr. Wager, and it was determined in the negative.

Thereupon the amendment offered by Mr. Patterson was again read, in the words following, to wit:

Resolved, That the answer of Alvah Beebe to the interrogatories propounded to him by this House, on the subject of his letter to General De Mott, and the explanation of the said answer by his counsel, be deemed satisfactory to this House, and that therefore the Speaker admonish the said Alvah Beebe against any such indiscretion in future, and that he be discharged.

Debates were had thereon, and the question being put whether the House would agree thereto, it was determined in the negative.

Nays, 75. Ayes, 24.

ALVAH BEEBE FOUND GUILTY, AND PUBLICLY REPRIMANDED BY THE SPEAKER.

The resolution offered by Mr. Burwell being amended, was read, in the words following, to wit:

Resolved, That Alvah Beebe has been *guilty* of a *contempt* and a breach of the *privileges* of this *House*, and that he be immediately brought to the bar of this House and *publicly reprimanded* by the Speaker in the presence of the House.

Thereupon, the said Alvah Beebe was brought to the bar of the House by the sergeant-at-arms, and the Speaker, addressing the accused, pronounced the following reprimand:

The resolution just read, clearly indicates the opinion of the House, of your conduct as the author of a letter addressed to one of its members, offering improper inducements to support an application pending before the Legislature. Your own admission establishes the fact that you were the writer of such letter. The offense committed

by you is one of no ordinary character, for which the statute imposes the heaviest penalties. Any attempt to corrupt the integrity of the members of this House, or to destroy the purity of legislation, deserves not only the severest reprehension, but the infliction of exemplary punishment. There are some circumstances calculated to palliate your offense; these are your youth and inexperience. To these, joined to your disclaimer of all wicked or corrupt intention, may be attributed the mildness of the decision of the House, which it is my duty to pronounce. In obedience to its order, I do therefore reprimand you for your conduct, and trust that this public admonition may prove a salutary lesson to yourself and serve as a warning example to all others.

Assembly Journal, 1833, pages 344, 345, 346, 347, 348.

ATTORNEY-GENERAL ORDERED TO DEFEND SUIT OF ALVAH BEEBE AGAINST HONORABLE CHARLES L. LIVINGSTON, SPEAKER, ETC.

ASSEMBLY CHAMBER, *March* 14th, 1833.

On motion of Mr. Morris,

Resolved, That the Attorney-General is hereby directed to defend the suit instituted by Alvah Beebe against the Honorable Charles L. Livingston, Speaker of this House, for having, in pursuance of an order of this House, issued a warrant against said Beebe.

Assembly Journal, 1833, page 485.

In the Matter of the Breach of Privilege of John A. Dayton.

CHARGE OF CORRUPTION RELATIVE TO BROOKLYN ASSESSMENT BILL.

ASSEMBLY CHAMBER, *March 5th*, 1858.

Mr. Dayton rose to a question of privilege, and in reference thereto, moved that the resolution adopted yesterday, relative to the matter of corruption charged in the passage of the Brooklyn assessment act, be amended so as to read as follows:

Resolved, That a committee of five be appointed to investigate the statement made by Mr. Dayton, upon information of corruption in this House, in relation to the bill applicable to assessments in the city of Brooklyn. That said committee have power to send for persons and papers, and be authorized to act with any committee of the Senate authorized to make a similar investigation, and that such com-

mittee report the result of such investigation to the House with all convenient speed.

Mr. Speaker put the question whether the House would agee to said resolution, and it was determined in the affirmative.

Assembly Journal, 1858, page 400.

ASSEMBLY CHAMBER, *March 10th*, 1858.

Mr. Dayton rose to a question of privilege, which he stated, and in reference thereto, the following preamble and resolution:

Whereas, A preamble and resolution was offered in the Senate of this State by the Senator from the third district, asking for the appointment of a committee of investigation into the charges alleged to have been made by Mr. John A. Dayton, a member of Assembly from the county of Kings, and which said committee was so appointed on the part of the Senate; and, whereas, charges alleged to have been so made by Mr. Dayton, are stated in the preamble to said resolution, to have been made direct and, as matter of fact, by him and not upon information; and, whereas, the statement made by Mr. Dayton was upon information, and not as a matter of fact within his own knowledge; and, whereas, a committee of investigation has been appointed by this House to investigate said charge, and report to this House thereupon. Therefore,

Resolved, That the committee of this House already appointed to inquire into said charges, be also instructed to inquire and report to this House, whether said John A. Dayton did or did not make the charges mentioned as stated in said preamble to said resolution as therein stated, and that for that purpose said committee have power to send for persons and papers.

Mr. Speaker put the question whether the House would agree to said resolution, and it was determined in the affirmative.

Assembly Journal, 1858, page 464.

MR. DAYTON EXONERATED.

ASSEMBLY CHAMBER, *March* 24, 1858.

Mr. Osgood, from the select committee to which was referred the following resolution:

Resolved, That a committee of five be appointed to investigate the statement of Mr. Dayton, upon information of corruption in this House, in relation to the bill applicable to assessments in the city of Brooklyn; that said committee have power to send for persons and papers, and be authorized to make a similar investigation; reported

that they had investigated the same and had arrived at the conclusion, that there was no reasonable ground for the belief that money or other improper inducements were offered to effect the passage of said bill, and concluded that there was no reasonable foundation for them, and ask to be discharged from its further consideration, which report was agreed to.

Assembly Journal, 1858, page 638.

REPORT OF THE COMMITTEE APPOINTED TO INVESTIGATE THE STATEMENT MADE BY MR. DAYTON, UPON INFORMATION OF CORRUPTION IN THIS HOUSE, IN RELATION TO THE BILL APPLICABLE TO ASSESSMENTS IN THE CITY OF BROOKLYN.

To the Honorable the Assembly:

Your committee appointed in pursuance of the following resolution, on motion of Mr. Duryea,

Resolved, That a committee of five be appointed to investigate the statement made by Mr. Dayton, upon information of corruption in this House, in relation to the bill applicable to assessments in the city of Brooklyn; that said committee have power to send for persons and papers, and be authorized to act with any committee of the Senate authorized to make a similar investigation, and that such committee report the result of such investigation to the House with all convenient speed, beg leave to report, that they have investigated to ascertain the source of said information, and have come to the conclusion, after due deliberation and examination, and there is no reasonable ground for the belief that money or other improper inducements were offered to effect the passage of the bill; your committee are satisfied that such rumors were current, but cannot trace them to any reliable source, and therefore conclude that there was no foundation for them; your committee now respectfully ask to be discharged.

All of which is respectfully submitted.

J. C. OSGOOD,
Chairman.

Assembly Documents, 1858, No. 114.

REPORT OF COMMITTEE AS TO ALLEGED CHARGES OF JOHN A. DAYTON.

Mr. Osgood, from the same committee to which was referred the following resolution:

Resolved, That the committee of this House, already appointed to inquire into said charges, be also instructed to inquire and report to

this House, whether said John A. Dayton did or did not make the charge mentioned as stated in said resolution as therein stated, and that said committee have power to send for persons and papers reported, that after investigating the same, had come to the conclusion, that the charges so-called was a statement made by Mr. Dayton upon information and not a matter of fact, and asked to be discharged from its further consideration, which report was agreed to.

Assembly Journal, 1858, page 638.

REPORT OF THE COMMITTEE APPOINTED BY RESOLUTION TO INVESTIGATE THE CHARGES ALLEGED TO HAVE BEEN MADE BY HON. JOHN A. DAYTON.

To the Honorable the Assembly:

Your committee of five. appointed under the following resolution:

Resolved, That a committee of five be appointed to investigate the statement made by Mr. Dayton, upon information of corruption in this House, in relation to the bill applicable to assessments in the city of Brooklyn.

And also instructed under the following of March 10th:

On motion of Mr. Dayton,

Whereas, A preamble and resolution was offered in the Senate of this State by the senator from the third district, asking the appointment of a committee of investigation into the charges alleged to have been made by Mr. John A. Dayton, a member of Assembly from the county of Kings, and which said committee was so appointed on the part of the Senate, and

Whereas, The charges alleged to have been so made by Mr. Dayton are stated in the preamble to said resolution to have been made direct and as matters of fact by him, and not upon information; and,

Whereas, The statement made by Mr. Dayton was upon information and not as a matter of fact within his own knowledge; and,

Whereas, A committee of investigation has been appointed by the House to investigate said charge and report to this House thereupon; therefore,

Resolved, That the committee of this House already appointed to investigate into said charges be also instructed to inquire and report to this House whether said John A. Dayton did or did not make the charges mentioned as stated in said preamble to said resolution as therein stated; and that said committee have power to send for persons and papers; beg leave to report that they have carefully investigated the same, and come to the conclusion that the charge so called

was a statement made upon information, and not a matter of fact, by Mr. Dayton in his place in debate in words as follows:

"I (Mr. Dayton) have been informed by a respectable member of this House, and were he in his place I would name him, that $10,000 was to be used in the passage of this (Brooklyn assessment) bill; that another man told me (Mr. Dayton) when coming up in the cars on Monday, that a certain Senator was to have $5,000 for the passage of the bill, and personally I believe it, though perhaps not to the extent of $10,000.

Your committee now respectfully ask to be discharged.

All of which is respectfully submitted.

J. C. OSGOOD,
Chairman.

Assembly Documents, 1858, No. 115.

Assembly Journal, 1858, page 638.

In the Matter of the Breach of Privilege of Jay Gibbons,

CHARGED WITH HAVING SOLICITED A CONSIDERATION FOR SUPPORT OF BILL RELATIVE TO ASSISTANT DISTRICT ATTORNEY, ALBANY COUNTY.

ASSEMBLY CHAMBER, *February 19th*, 1861.

Mr. Gibbons rose to a question of privilege, relative to the charge of having corruptly solicited a consideration for his official action in regard to a bill now pending before the Assembly, and offered the following preamble and resolution:

Whereas, Jay Gibbons, the member of this house from the first Assembly district of the county of Albany, is charged with having corruptly solicited a consideration for his official action in regard to a bill now pending before this House to increase the salary of the assistant district attorney of the county of Albany; therefore,

Resolved, That a select committee of five be appointed to investigate said charge, and report the facts to this House, with their conclusions thereon. Also, that said committee have power to send for persons and papers, and to employ a clerk.

Mr. Fish moved to amend the resolution by adding after the word "charge" the words, "so far as it relates to any member of the House."

Mr. Speaker put the question whether the House would agree to said amendment, and it was determined in the affirmative.

Mr. Speaker put the question whether the House would agree to said resolution as amended, and it was determined in the affirmative.

Assembly Journal, 1861, page 349.

COMMITTEE APPOINTED.

February 19, 1861.

The Speaker announced the following select committee to investigate the charges of corruption against the Hon. Jay Gibhons, member of Assembly from the first Assembly district of Albany county, to wit: Messrs. Bingham, Tuthill, Reman, Hutchins and Taber.

Assembly Journal, 1861, page 352.

ASSEMBLY CHAMBER, *March* 20, 1861.

REPORT OF THE SELECT COMMITTEE APPOINTED TO INVESTIGATE THE CHARGE AGAINST JAY GIBBONS, MEMBER FROM THE FIRST ASSEMBLY DISTRICT OF ALBANY COUNTY.

Mr. Kernan, from the select committee appointed to investigate the charge against Jay Gibbons, a member of this House from the first Assembly district of the county of Albany, respectfully reports, that on the 15th of January last a bill to increase the salary of the assistant district attorney of Albany county to fifteen hundred dollars per annum was introduced into the Assembly, and referred to a committee consisting of Messrs. Benedict, Lansing, Wheeler and Gibbons, the members from that county. On the 28th of the same month this committee, by a report signed by each of its members, reported the bill to the House, and recommended its passage, and the same was referred to the committee of the whole House for consideration.

Monday, the 17th of February, Mr. Gibbons was arrested on a complaint made by the district attorney of the county of Albany, charging him with soliciting a bribe for his official action in reference to this bill, and on the next day, on the application of Mr. Gibbons, the Assembly adopted the preamble and resolution under which your committee was appointed, which are as follows:

Whereas, Jay Gibbons, the member of this House from the first Assembly district of the county of Albany, is charged with having corruptly solicited a consideration for his official action in regard to a bill now pending before this House to increase the salary of the assistant district attorney of the county of Albany; therefore,

Resolved, That a select committee of five be appointed to investigate said charge so far as it relates to any member of this House, and report the facts to this House with their conclusions thereon. And that said committee have power to send for persons and papers, and to employ a clerk.

All the persons whom your committee have reason to believe could give any information on the subject mentioned in the resolution, have been examined on oath before the committee, and their evidence reduced in writing, which evidence the committee herewith lay before the House.

In the judgment of the committee, this evidence establishes that a proposition was made that Mr. Gibbons should receive, as a consideration or inducement for his official vote and influence in favor of the passage of said bill by the Assembly, the sum of one hundred dollars, fifty dollars immediately, and the further sum of fifty dollars when the bill passed the House, and that he entertained such proposition and negotiated in reference to it during two or three days.

The evidence is contradictory as to whether this proposition was first made by Mr. Gibbons to the assistant district attorney, or by the latter to the former, and the committee have not deemed it necessary or important that they should come to a conclusion or express any opinion upon this point. By the statute on this subject, the public officer who entertains any negotiation or proposition for any gift, thing of value or advantage, as a consideration or motive for his official vote, action or influence, is guilty of the same offense, and subject to the like punishment as the officer who solicits, proposes or demands the receipt of such gift or value, as a consideration for his official vote or action (3 Revised Statutes, 5 ed., p. 962, § 10); and in reference to the character of this House and its action, it is not important in the opinion of the committee to distinguish between the misconduct and guilt of the public officer who solicits a bribe, and one who favorably entertains a proposition to bribe him made to him by another.

There is no evidence implicating any member of the House in the transaction.

The conclusion of the committee is that Mr. Gibbons has been guilty of misconduct, rendering him unworthy of a seat in this Assembly, and they therefore recommend the adoption, by the House, of the following resolution:

Resolved, That Jay Gibbons, the member from the first Assembly district of the county of Albany, has been guilty of official miscon-

duct, rendering him unworthy of a seat in this House, and that he be and hereby is expelled.

All of which is respectfully submitted.

ANSON BINGHAM.
F. KERNAN.
ROBERT C. HUTCHINGS.
STEPHEN TABER.

ALBANY, *March*, 20*th*, 1861.

Assembly Document, 1861, No. 104.
See Assembly Document, 1861, No. 104 for testimony.

The question being on the adoption of the resolution,

Mr. Merrit moved to lay the same on the table.

Mr. Speaker put the question whether the House would agree to said motion, and it was determined in the negative.

Debate was had thereon, when

Mr. Kernan moved that the report without the evidence be laid on the table and printed.

Mr. Benedict moved that the report and evidence be printed.

Mr. Speaker put the question whether the House would agree to said motion, and it was determined in the affirmative.

The question then being upon the adoption of the resolution,

Mr. Finch moved to lay the same on the table.

Mr. Speaker put the question whether the House would agree to said motion, and it was determined in the affirmative.

Assembly Journal, 1861, page 601.

ASSEMBLY, *March* 22*d*, 1861.

Mr. Bingham offered for the consideration of the House a resolution in the words following, to wit:

Resolved, That the report of the select committee in the case of Jay Gibbons, member of Assembly from Albany county, be made the special order for Friday evening next at half past seven o'clock, and that Mr. Gibbons may be then heard by counsel at the bar of the House.

Mr. Speaker then put the question whether the House would agree to said resolution, and it was determined in the affirmative.

Assembly Journal, 1861, pages 665, 666.

ASSEMBLY CHAMBER, *March* 29*th*, 1861.

Mr. Speaker presented the following communication:

ALBANY, *March* 29, 1861.

Hon. D. W. C. LITTLEJOHN,

Speaker of the Assembly:

SIR.—The report of the select committee of investigation in the matter of Mr. Jay Gibbons, the member of Assembly from the first Assembly district of Albany county, having been made the special order for this evening, I regret, in behalf of Mr. Gibbons, to have to inform the House through you, that Hon. Mitchell Sanford, the senior counsel for Mr. Gibbons, who was retained to argue his case before the Assembly, has not arrived, and that I have received a telegraph dispatch informing me that he is very sick and unable to be here.

I saw Mr. Sanford at his office in Brooklyn on Monday last, and he had then so far recovered from his former illness that he had no doubt of his being fully able to be in Albany to-night and defend his client with his accustomed strength and ability.

Under the circumstances, the junior counsel in the case, being so unexpectedly called upon, are entirely unprepared to proceed this evening; and in justice to all parties—to the House, to Mr. Gibbons and to themselves—they are compelled to throw themselves upon the indulgence of the Assembly, and respectfully ask that the hearing may be postponed until such day next week as may best suit the convenience of the House, when, if Mr. Sanford should unfortunately be still unable to attend, they will be prepared to proceed with the argument.

I am, sir, respectfully,
Your obedient servant,
T. C. CALLICOT.

Mr. Benedict moved to postpone the special order until Tuesday evening next at seven o'clock, P. M.

Mr. Birdsall moved to amend by striking out Tuesday and inserting Friday.

Mr. Speaker put the question whether the House would agree to said amendment, and it was determined in the negative.

Mr. Speaker then put the question whether the House would agree to said motion of Mr. Benedict, and it was determined in the affirmative, two-thirds of all the members present voting in favor thereof.

Assembly Journal, 1861, page 757.

ASSEMBLY CHAMBER, *April* 3, 1861.

Mr. Callicot, counsel for Mr. Gibbon, addressed the House in defense of Mr. Gibbons.

Mr. Callicot proceeded to argue that the House had no power to expel a member, and having concluded that branch of his argument, asked permission to move that the question of the power of the House to expel a member be referred to the judiciary committee.

Mr. Speaker decided that such a motion would not be in order.

Mr. Callicot then proceeded with and concluded his argument.

Mr. Fish offered the following as a substitute for the resolutions of the select committee.

Resolved, That Jay Gibbons, the member from the first Assembly district in the county of Albany, has been guilty of official misconduct, unworthy of his position as a legislator, and deserving the censure of this House, and that he be and hereby is admonished of the severe displeasure of this Assembly.

Mr. Speaker put the question whether the House would agree to said substitute, and it was determined in the negative.

Ayes, 15. Noes, 92.

Mr. Benedict not having voted on the first call of the roll, and the point of order being raised, he was declared in contempt.

Mr. Birdsall moved that he be purged of contempt.

Mr. Speaker put the question whether the House would agree to said motion, and it was determined in the affirmative.

The question then being on the adoption of the resolution.

Mr. Arcularius offered the following as a substitute,

Resolved, That Jay Gibbons be requested to resign.

Mr. Speaker put the question whether the House would agree to said substitute, and it was determined in the negative.

MR. GIBBONS EXPELLED.

Mr. Speaker put the question whether the House would agree to said resolution, and it was determined in the affirmative.

Ayes, 99. Noes, 8.

Assembly Journal, 1861, pages 795–796.

In the Matter of the Breach of Privilege of Theophilus C. Callicot, Speaker of the Assembly.

CHARGED WITH CORRUPT BARGAIN AND COMBINATION TO SECURE ELECTION OF UNITED STATES SENATOR AND ELECTION OF CLERK, TO SECURE THE SPEAKER.

ASSEMBLY CHAMBER, *Albany, January* 26, 1863.

Mr. Fields rose to a question of privilege, and offered for the consideration of the House a preamble and resolution in the words following, to wit:

Whereas, Charges have been made against the integrity, honesty and personal fitness of Mr. T. C. Callicot, of Kings, Speaker elect, and it is alleged there is evidence in existence to substantiate such charges; and,

Whereas, It is alleged that there is further evidence that the said T. C. Callicot has entered into negotiations to exert his influence and power, as Speaker of the Assembly, in favor of a certain candidate for United States Senator, who would assist him in securing the speakership; and,

Whereas, There is reason to believe that the said T. C. Callicot entered into a corrupt bargain to secure the election of clerk, and other officers of this House; therefore, be it

Resolved, That a committee of privileges be elected by the House, by ballot, to investigate the said charges, and also the legislative conduct and acts of T. C. Callicot, in the Assembly of 1860, and report thereon to this House, and that said committee have power to send for persons and papers.

Mr. Speaker announced the question to be on the adoption of the resolution of Mr. Fields.

Debate was had thereon, when, pending the question,

On motion of Mr. Dean, at two o'clock and thirty minutes the House adjourned.

Assembly Journal, 1863, page 108.

January 27, 1863.

Mr. Fields called for the consideration of the resolution offered by him yesterday, as a question of privilege, and pending at the time of adjournment.

Debate ensued, when Mr. Fletcher moved that the further consideration of the subject be postponed until Thursday, February 5th, at twelve o'clock M.

Mr. Speaker put the question whether the House would agree to the said motion, and it was determined in the affirmative, two-thirds of all the members present voting in favor thereof.

Assembly Journal, 1863, page 109.

February 5th, 1863.

The House then proceeded to the consideration of the special order, being the preamble and resolution offered by Mr. Fields, in the words following, to wit:

Whereas, Charges have been made against the integrity, honesty and personal fitness of Mr. T. C. Callicot, of Kings, Speaker elect, and it is alleged there is evidence in existence to substantiate such charges; and,

Whereas, It is alleged there is further evidence that the said T. C. Callicot has entered into negotiations, to exert his influence and power as Speaker of the Assembly, in favor of a certain candidate for United States Senator, who would assist him in securing the speakership; and,

Whereas, There is reason to believe that the said T. C. Callicot entered into a corrupt bargain to secure the election of clerk and other officers of the House. Therefore, be it

Resolved, That a committee of five be elected by the House, by ballot, to investigate the said charges, and, also, the legislative conduct and acts of T. C. Callicot in the Assembly of 1860, and report thereon to this House, and that said committee have power to send for persons and papers.

Mr. Andrews moved that said resolution be referred to the committee on privileges and elections.

Debate was had thereon, when Mr. Andrews withdrew his motion.

Mr. W. Dewey moved to amend by striking out all after the word "whereas," and inserting the following:

"Certain rumors of improper official conduct on the part of the member of this House from the fifth district of Kings county, have been circulated; and,

Whereas, This House desires a full investigation of every distinct charge against the said member of such conduct; therefore,

Resolved, That whenever a specific charge shall be made against the said member, of corrupt or criminal conduct in his official character, which charge shall be in writing and signed by a member of the Legislature, stating that he, the member so signing, believes the same to be true, and giving the facts and circumstances upon which the said belief is founded, and which charges shall appear to demand investi-

gation, then a committee of five shall be elected by this House, with power to send for persons and papers and to inquire into such charges, and to report to this House the evidence and the conclusions of the committee thereon."

Mr. A. Smith moved to amend the amendment by adding thereto as follows: "And that the committee have power to inquire into the character and conduct of persons who have been members of the Assembly in 1860, and, also, those who are now members, who have been known in the past as lobby members."

Debate was had thereon, when Mr. Dean moved the previous question.

Mr. Speaker put the question "Shall the main question be now put?" and it was determined in the affirmative.

Mr. Speaker then put the question whether the House would agree to said amendment of Mr. A. Smith, and it was determined in the negative.

Mr. Speaker then put the question whether the House would agree to the said amendment of Mr. W. Dewey, and it was determined in the affirmative.

Ayes, 50. Noes, 48.

Mr. Speaker then put the question whether the House would agree to said resolution, as amended, and it was determined in the affimative.

Ayes, 88. Noes, 1.

Mr. Dean moved to reconsider the vote just taken, and that said motion be laid on the table. Pending the question, Mr. Dean moved that the House take a recess until seven o'clock, P. M.

Mr. Speaker put the question whether the House would agree to the said motion, and it was determined in the negative.

Ayes, 35. Noes, 39.

Mr. Dean having withdrawn his motion to lay the question of reconsideration on the table, the Speaker announced the question to be on the motion of Mr. Deane to reconsider.

Pending the question, on motion of Mr. Fields, the roll was called to ascertain if a quorum was present, when sixty-nine members answered to their names.

The question being on a motion to reconsider, Mr. Dean moved that the same be laid on the table.

Mr. Speaker put the question whether the House would agree to said motion to reconsider, and it was determined in the negative.

Assembly Journal 1863, pages 169–172.

Mr. Lawrence offered for the consideration of the House, a preamble and resolution in the words following, to wit:

Whereas, Grave charges have been made upon the floor of this House against Hon. T. C. Callicot, the Speaker thereof, seriously affecting his official character. And whereas, it has been publicly charged, that the Union Republican majority of this House have attempted to suppress investigation into the same; and whereas, this House, by a resolution adopted two weeks since, professed its readiness to inquire into said charges whenever the same shall be specified and verified, by the signature of any member thereof,

Resolved, That the Hon. T. C. Fields, of New York, the member who made said charges, be requested to produce to this House any evidence he may have in his possession supporting the same, to the end that the Hon. T. C. Callicot may be publicly vindicated therefrom, or the ends of justice otherwise subserved.

Said resolution giving rise to debate,

Ordered, That the same be laid on the table.

Assembly Journal, 1863, page 332

March 4, 1863.

PRESENTATION OF CHARGES AND SPECIFICATION OF CHARGES AGAINST MR. T. C. CALLICOT, MEMBER OF ASSEMBLY FROM THE FIFTH ASSEMBLY DISTRICT OF KINGS COUNTY.

Mr. Fields arose to a question of privilege, and offered the following:

To the Honorable the House of Assembly of the State of New York:

Whereas, The House of Assembly did, on the fifth day of February, 1863, adopt a preamble and resolution in the words following:

"*Whereas*, Certain rumors of improper official conduct on the part of the member of this House from the fifth district of Kings county, have been circulated;

"*And whereas*, This House desires a full investigation of every distinct charge against the said member, of such conduct; therefore,

"*Resolved*, That whenever a specific charge shall be made against the said member of corrupt or criminal conduct in his official character, which charge shall be in writing, and signed by a member of the Legislature, stating that he, the member so signing, believes the same to be true, and giving the facts and circumstances upon which said belief is founded, and which charges shall appear to demand investigation, then a committee of five shall be elected by this House, with power to send for persons and papers, and to inquire into such

charges, and to report to this House the evidence, and the conclusions of the committee thereon."

The undersigned, Thomas C. Field, a member of this House from the seventeenth district of New York, charges Theophilus C. Callicot, a member of this House from the fifth Assembly district of the county of Kings, and elected Speaker of this House, with corrupt and criminal conduct in his official character; and he states that he believes the said charges to be true, and that he believes the said Theophilus C. Callicot has been and is guilty of corrupt and criminal conduct in his official character; and he makes the following statement of the facts and circumstances upon which his belief of the corrupt and criminal conduct of the said Theophilus C. Callicot is founded:

About three years ago the said Theophilus C. Callicot made application to one Mrs. Mary A. Wood, a resident of the city of Brooklyn, to obtain a loan for a short period, of the sum of $500; that it being inconvenient to Mrs. Wood to spare the money at that time, she was not able to accede to the request; that Mrs. Wood had in her possession eight shares of bank stock of the value of $100 a share; that at the urgent solicitation of the said Theophilus C. Callicot, Mrs. Wood was induced to trust him with such eight shares of bank stock; that Mrs. Wood loaned said Callicot this stock, and said Callicot obtained the same upon the distinct understanding that he might hypothecate the same, and raise thereon a loan of $500, and was to return such stock to Mrs. Wood in a short time, and was not to use the same in any other manner, or for any other purpose; that in violation of the trust and confidence reposed in him, and instead of pledging said stock for a loan of $500, said Callicot sold the same, and fraudulently converted the entire avails of such sale to his own use; that said Callicot has been repeatedly requested, from time to time, to return such stock or to pay to Mrs. Wood its value, but has by a variety of unworthy pretenses, evaded the payment thereof for a period of three years, and until after the commencement of the present session of the Legislature, when the said Callicot paid the same under the circumstances next hereinafter stated, viz.:

That during the month of January, 1863, and prior to the organization of this House, one Mr. Thomas Hope, of the city of Brooklyn, acting as the agent for and on the part of Mrs. Wood, applied to said Callicot for a return of the said stock, or for payment of the value thereof, and informed said Callicot that he would send a communication to this House stating the facts, to show that said Callicot had fraudulently obtained the said stock and had converted the same to his

own use, with the intent to cheat and defraud the said Mary A. Wood out of the same, and also gave said Callicot to understand, that it was the intention of Mrs. Wood to institute a criminal prosecution by indictment against him for his fraudulent conduct in relation thereto.

That to avoid the disgrace necessarily consequent upon a public exposure of his conduct and to escape from criminal prosecution, the said Theophilus C. Callicot thereupon at once put himself into communication with a highly esteemed and distinguished gentleman, a resident of this city, but a prominent and influential member of the republican union party of this State. That an interview was thereupon had between the gentleman referred to and the chairman of the republican union State central committee (the said committee being the recognized authority to act for and on behalf of such republican union party), and that the negotiation thus commenced resulted in a corrupt, improper and illegal bargain on the part of the said Theophilus C. Callicot to transfer the majority of this Assembly into the control of said republican union party, upon condition that the said republican union State central committee should advance and pay to him, the said Callicot, an amount of money sufficient to enable him, the said Callicot, to pay and discharge the claim of Mrs. Wood, before referred to, and other debts which had been long outstanding against and unpaid by him, and would also support him, the said Callicot, for the position of Speaker of this House; and that these conditions being performed, he, the said Callicot, should and would vote for all republican officers of this House elective by the Assembly, and would so rule as such Speaker, and would so vote upon the question of the election of a United States Senator for the State of New York in the Congress of the United States, as to enable the said republican union party to elect a member of their own political organization, as and for such United States Senator.

That in order to pay the said Callicot the moneyed consideration (or a portion of it) for his treachery to the democratic majority of this House, the chairman of the republican union State central committee, acting in the name, and as the representative of the republican union party of this State, did thereupon make and draw a draft or bill of exchange upon the treasurer of the republican union State central committee, for the sum of one thousand and two hundred dollars.

That the draft for one thousand and two hundred dollars was made by the chairman of such committee at the city of Albany, and was directed to the treasurer of that committee at the city of New York,

to be there accepted and paid by him. That the draft was discounted at a bank in this city, and was sent to New York for collection, and has been there paid by the treasurer of the republican union State central committee. And that the avails of such draft and discount were paid to the said Theophilus C. Callicot, and that he, the said Theophilus C. Callicot, received such sum of one thousand and two hundred dollars, as a part of the price of his proposed treachery in betraying such democratic majority, and the interests of this State, and to enable him to defeat the candidate of the democratic party for the speakership of this House, and to secure to the republican union party the election of their candidate for the position of United States Senator. And that by means of these "thirty pieces of silver," the said Callicot secured to himself the three-fold advantages—first, of discharging the just claim of Mrs. Mary A. Wood; second, of escaping from a criminal prosecution due to his fraudulent misconduct; and third, of being elevated to the position of Speaker of the Assembly of the State of New York.

The undersigned has been informed and believes, and so charges, that the said Callicot has from time to time received other sums of money from the said republican union State central committee, or the chairman thereof, or from other persons, members of said republican union party, in further consideration of his said treachery and betrayal of the democratic majority of this House, as herein above alluded to and charged.

The undersigned further charges, that in pursuance of such corrupt bargain and agreement, the said Callicot was elected Speaker of the Assembly by the votes of the republican union members of this House. And that since his election as such Speaker, he has, as Speaker of this House, so ruled and voted as to enable the said republican union party to elect the elective officers of this House, and to elect a member of the republican union party a Senator of the United States for said State of New York. And that since entering into such unlawful agreement and bargain, the said Theophilus C. Callicot has voted with the said republican members on all, or nearly all, political questions.

The undersigned also charges the said Theophilus C. Callicot with an attempt to commit the crime of bribery, by soliciting money as a gift for his vote, while a member of the House of Assembly in the year 1860, and makes the following statement of the facts and circumstances on which his belief of said Callicot's guilt of this charge is founded, viz.:

That while said Callicot was a member of the House of Assembly in the year 1860, there had been introduced into, and was then pending in the Assembly, a bill entitled "An act to amend section 140 of chapter 1, title 2 of the Revised Statutes, entitled 'Of alienation by deed,'" that one Mr. Walter S. Church, of the city of Albany, was supposed by said Callicot to have a large pecuniary interest, which would be seriously impaired by the passage of such bill; that said Callicot gave the said Mr. Church to understand that he believed such bill to be wrong in principle, and that it ought to be defeated. And that said Callicot did, as a member of the judiciary committee, on the 27th day of February, 1860, make a minority report against such bill, and did state therein at length his reasons in opposition thereto, as will more fully appear by Assembly document No. 98, of that year, reference being made thereto as a part of these charges. That said bill came up in the Assembly on the 29th day of March, 1860, when a motion was made to recommit it to the committee on the judiciary, with instructions to amend it. And that such motion was lost by a vote, ayes 54, noes 54, said Callicot voting in the affirmative; that such bill was then put upon the final passage, and was lost by a vote, ayes 54, noes 58, said Callicot voting in the negative, and against the passage of the bill; and that a motion was then made and agreed to by the House, to reconsider the vote on the final passage, and that such motion lay upon the table; that on the 5th day of April, 1860, Mr. Bingham having charge of the bill, called upon the motion to reconsider, and it was carried by a vote, ayes 71, noes 25, said Callicot voting in the negative; that a resolution being then offered to amend said bill, it was determined in the negative by a vote, ayes 41, noes 66, said Callicot voting in the affirmative; and that such bill being then put on its final passage, it was passed by a vote, ayes 74, noes 34, said Callicot voting in the affirmative.

The undersigned charges that, shortly after making and presenting his report in opposition to the passage of such bill, the said Theophilus C. Callicot wrote and sent to the said Walter S. Church a letter, in the words following:

CONGRESS HALL, *March* 5.

DEAR SIR.—Will you do me the favor to lend me your check for $100 for a few days? An unexpected draft has been made on me, to be paid to-day, and I shall have to send home for the money.

Please send per the bearer and much oblige,

Yours truly,

T. C. CALLICOT.

The undersigned charges that such sum of one hundred dollars was sought, under pretense of a loan, but was intended by the said Callicot to be received by him as a gift and bribe, to influence his vote and action upon the bill before referred to, and then pending in said House of Assembly; and that the pretense stated in such letter, "that an expected draft had been made upon said Callicot to be paid that day," was, as the undersigned believes and charges, a fraud and falsehood; that, failing to obtain said sum of one hundred dollars, the said Callicot afterwards increased his demand upon the said Walter S. Church, to the sum of one hundred and fifty dollars, and that, failing also to extort this sum, he voted in favor of the final passage of the bill, which he had both reported and voted against, as an act of revenge for not obtaining the bribe he solicited. And the undersigned distinctly charges that, in proposing to receive from the said Walter S. Church, first the sum of one hundred dollars, and afterwards the sum of one hundred and fifty dollars, it was the object and intent of the said Theophilus C. Callicot to receive such sum of money as a consideration or motive for his official vote and action in resisting the passage of the bill before referred to.

The undersigned has also been informed and believes, and further charges, that the said Theophilus C. Callicot, after obtaining the democratic nomination as a candidate for member of Assembly, for the fifth Assembly district in the county of Kings, and while running as such candidate, did make an application to a resident of the city of Brooklyn, and president of a horse railroad company in that city, for money as a gift. And that, as an inducement to said president to advance and give him a sum of money, the said Callicot intimated that, in case he was elected to this Assembly, he would so vote and conduct himself, as a member therein, as to advance the interests of said railroad company, and would promote by his vote and action such measures as might come before this legislature, and in which said railroad company might have any interest. And the undersigned has been informed and believes, and so charges, that the said Theophilus C. Callicot did obtain and receive the sum of two hundred dollars in money, and that he, the said Callicot, received the same as a consideration or motive for his official vote, action and influence, in case he should be elected a member of this Assembly.

The undersigned further alleges and charges, that said Callicot did take and receive during said session of 1860, or immediately after the close thereof, the sum of two hundred and fifty dollars for a vote cast

and given by him in favor of the passage of a bill before said Legislature.

The undersigned, believing the said Theophilus C. Callicot to have been guilty of corrupt and criminal conduct, so as to render him unworthy of a seat upon the floor of this House, has annexed hereto charges, and specifications of charges, which he now presents for investigation.

THOMAS C. FIELDS,
Member from the Seventeenth District of New York.

CHARGES AND SPECIFICATION OF CHARGES PREFERRED BY THOMAS C. FIELDS, A MEMBER OF ASSEMBLY FROM THE SEVENTEENTH ASSEMBLY DISTRICT OF NEW YORK, AGAINST THEOPHILUS C. CALLICOT, A MEMBER FROM THE FIFTH ASSEMBLY DISTRICT OF KINGS COUNTY, AND SPEAKER OF THE HOUSE OF ASSEMBLY.

Charge First.—Fraudulent and dishonest conduct, and misappropriation of property intrusted to him.

Specification.—That the said Theophilus C. Callicot did, about three years ago, at the city of Brooklyn, fraudulently obtain from one Mrs. Mary A. Wood eight shares of bank stock, of the value of eight hundred dollars, and did fraudulently convert the same to his own use, with intent to cheat and defraud the said Mrs. Mary A. Wood of the same.

Charge Second.—Bribery and corruption while a member of the Assembly, in the year 1860.

1st Specification.—That he, the said Theophilus C. Callicot did, on or about the 5th day of March, 1860, and while such member, at the city of Albany, indirectly propose to one Walter S. Church to receive as a gift the sum of one hundred dollars in money, as a consideration and motive for the official vote, action and influence of him, the said Theophilus C. Callicot, in opposing the passage of a bill then pending in and before said House of Assembly, entitled "An act to amend section 140 of chapter 1, title 2 of the Revised Statutes, entitled 'Of alienation by deed.'"

2d Specification.—That he, the said Theophilus C. Callicot did, shortly after the 5th day of March, 1860, and while such member, at the city of Albany, indirectly propose to one Walter S. Church to receive, as a gift, the sum of one hundred and fifty dollars in money, as a consideration and motive for the official vote, action and influence of him, the said Theophilus C. Callicot, in opposing the passage of a bill then pending in and before said House of Assembly, entitled

" An act to amend section 140 of chapter 1, title two of the Revised Statutes, entitled ' Of alienation by deed.' "

3d Specification.—That he, the said Theophilus C. Callicot did, during the session of the Legislature of 1860, or shortly after its adjournment, receive and take the sum of two hundred and fifty dollars, in money, as a gift, under an understanding and agreement made and entered into during the session of the Legislature of 1860, that the official vote, judgment and action of him, the said Theophilus C. Callicot, should be influenced upon a particular side of a matter, while the same was pending in and before said House of Assembly.

Charge Third.—Soliciting a sum of money as a bribe, while a member of the Legislature of 1860.

1st Specification.—That he, the said Theophilus C. Callicot did, on or about the 5th day of March, 1860, and while such member, at the city of Albany, indirectly propose to one Walter S. Church to receive, as a gift, the sum of one hundred dollars in money, as a consideration and motive for the official vote, action and influence of him, the said Theophilus C. Callicot, in opposing the passage of a bill then pending in and before said House of Assembly, entitled " An act to amend section 140 of chapter 1, title 2 of the Revised Statutes, entitled ' Of alienation by deed.' "

2d Specification.—That he, the said Theophilus C. Callicot did, shortly after the 5th day of March, 1860, and while such member, at the city of Albany, indirectly propose to one Walter S. Church to receive, as a gift, the sum of one hundred and fifty dollars in money, as a consideration and motive for the official vote, action and influence of him, the said Theophilus C. Callicot, in opposing the passage of a bill then pending in and before said House of Assembly, entitled " An act to amend section 140 of chapter 1, title 2, of the Revised Statutes, entitled ' Of alienation by deed.' "

Charge Fourth.—Attempting to procure money by fraud and falsehood while a member of the Legislature of 1860.

Specification.—That he, the said Theophilus C. Callicot did, on or about the 5th day of March, 1860, falsely and fraudulently pretend to one Walter S. Church that an unexpected draft had been made upon him, the said Callicot, that day, with intent to obtain from the said Walter S. Church the sum of one hundred dollars in money, and to cheat and defraud him of the same, and to appropriate it to said Callicot's own use. Whereas, in truth and in fact no draft had been made on the said Theophilus C. Callicot on that day.

Charge Fifth.—Soliciting and obtaining a gift of money, after being

nominated as a member of Assembly and before election, with the intent to barter and sell his official influence if elected.

Specification.—That after being nominated as a candidate for the office of member of Assembly, the said Theophilus C. Callicot did, in the fall of the year 1862, solicit from a certain resident of the city of Brooklyn, he being president of a horse railroad company in said city, a gift of money, and with obtaining the sum of two hundred dollars, with the intent and promise that the official votes, opinions and actions of him, the said Theophilus C. Callicot, should be influenced in a particular manner on all matters that might come or be brought before this Legislature in which the said railroad company might have or feel any interest.

Charge Sixth.—Bribery and corruption as a member of the House of Assembly in the year 1863.

1st Specification.—That the said Theophilus C. Callicot, in the month of January, 1863, after he had qualified and taken his seat as a member of this House, did propose to receive the sum of one thousand and two hundred dollars in money, as a consideration and motive for his official action in organizing the House, by the election of a Speaker.

2d Specification.—That the said Theophilus C. Calliot, in the month of January, 1863, and after he had qualified and taken his seat as a member of this House, did propose to receive the sum of one thousand two hundred dollars in money, as a consideration and motive for his official action in relation to the election of United States Senator for the State of New York to the Congress of the United States.

3d Specification.—That the said Theophilus C. Calliot, in the month of January, 1863, and after he had qualified and taken his seat as a member of this House, did receive from or through the chairman of the republican union State central committee, the sum of one thousand and two hundred dollars in money, as a consideration and motive for his official influence and action as such member of Assembly.

4th Specification.—That the said Theophilus C. Callicot, in the month of January, 1863, and after he had qualified and taken his seat as a member of this House, did receive from or through the chairman of the republican union State central committee, the sum of one thousand two hundred dollars in money, as a consideration and motive for his official action upon the question of the election of a United States Senator for the State of New York to the Congress of the United States.

5th Specification.—That the said Theophilus C. Callicot, in the

month of January, 1863, and after he had qualified and taken his seat as a member of this House, did accept and take a nomination for the office of Speaker of this House (the same being a position of individual advantage to himself) as the candidate of the republican union party, as a consideration and motive for his official vote, influence and action as such member of Assembly.

6th Specification.—That the said Theophilus C. Callicot, in the month of January, 1863, and after he had qualified and taken his seat as such member, did accept from the republican union party, on the floor of this House, a nomination and election to the office of Speaker to this Assembly (the same being a position of profit and advantage to him, the said Theophilus C. Callicot), under an agreement and understanding that his vote, and influence and action, as such member of Assembly, should be influenced thereby upon the question of the election of a United States Senator for the State of New York to the Congress of the United States.

7th Specification.—That he, the said Theophilus C. Callicot, in the month of January, 1863, and after he had qualified and taken his seat as a member of this House, did accept from the republican union party, on the floor of this House, a nomination and election to the office of Speaker thereof (the same being a position of profit and advantage to him, the said Theophilus C. Callicot), under an agreement and understanding that his votes, influence and action, as such member, should be influenced thereby upon all questions relating to the election of elective officers of this Assembly.

8th Specification.—That the said Theophilus C. Callicot, in the month of January, 1863, and after he had qualified and taken his seat as such member, did accept and obtain from the republican union party of this House, a nomination and election by their votes to the office of Speaker thereof (the same being an office of individual advantage to him, the said Theophilus C. Callicot), as a consideration and motive for the official votes and action of him, the said Theophilus C. Callicot, as such member.

Charge Seventh.—Bribery and corruption as a member of the Assembly in the year 1860.

Charge Eighth.—Bribery and corruption as a member of this Assembly.

THOMAS C. FIELDS,
Member from Seventeenth District, City of New York.

Assembly Journal, 1863, pages 370 to 377, both inclusive.

SPECIAL ORDER, CONSIDERATION OF.

March 6, 1863.

The hour of twelve o'clock having arrived,

Mr. Speaker announced the special order, being the charges and specifications prepared by Hon. T. C. Fields against Theophilus C. Callicot.

Mr. Fields moved to postpone the special order until Wednesday next at twelve o'clock M.

Debate was had thereon, when

Mr. Moulton moved to amend by striking out the words "twelve o'clock M." and inserting in lieu thereof the words "seven o'clock P. M.," and adding at the end thereof the words "and that a session be held at that time for that purpose."

Mr. Speaker put the question whether the House would agree to said amendment, and it was determined in the affirmative.

Mr. Speaker then put the question whether the House would agree to the said motion as amended, and it was determined in the affirmative, two-thirds of all the members present voting in favor thereof.

Assembly Journal, 1863, page 397.

March 11, 1863—Seven o'clock P. M.

The House again met.

Pursuant to subdivision four of rule two, the Speaker designated Mr. De Pew to occupy the chair.

The Speaker announced the special order being the charges and specifications preferred against the Hon. T. C. Callicot, Speaker of the House.

Mr. Fields moved that the same be postponed for half an hour.

Mr. Speaker put the question whether the House would agree to the said motion, and it was determined in the affirmative, two-thirds of all the members present voting in favor thereof.

Mr. Speaker announced the special order, being the charges and specifications preferred by Mr. T. C. Fields against Hon. Theophilus C. Callicot, Speaker of the House.

Mr. Speaker announced the question to be on the adoption of the resolution of Mr. Van Buren, in the words following, to wit:

Whereas, The following resolution, offered by Mr. W. Dewey, of Jefferson, was, on the 5th day of February, 1863, adopted by this House, to wit:

"*Whereas*, Rumors of improper official conduct, on the part of the member of this House from the 5th district of Kings county, have been circulated; and whereas, this House desires a full investigatio-

of every distinct charge against the said member, of such conduct; therefore

"*Resolved*, That whenever a specific charge shall be made against such member, of corrupt or criminal conduct in his official character, which charges shall be in writing, and signed by a member of the Legislature, stating that he, the member so signing, believes the same to be true, and giving the facts and circumstances upon which said belief is founded, and which charges shall appear to demand investigation, then a committee of five shall be elected by this House, with power to send for persons and papers, and to inquire into such charges, and to report to this House the evidence, and the conclusions of the committee thereon."

And whereas, Specific charges, affecting the standing and official character of the said member of this House from the 5th district of Kings county, Theophilus C. Callicot, present Speaker of the Assembly, have, in accordance with the above resolution, been made in writing, and signed and presented to this House by Thomas C. Fields, member of this Assembly from the 17th Assembly district of New York; therefore,

Resolved, That Gilbert Dean, of New York, Samuel E. Johnson, of Kings, Palmer E. Havens, of Essex, Stephen L. Mayham, of Schoharie, and Nathaniel W. Davis, of Tioga, be, and they are hereby elected a committee on the part of this House, with power to send for persons and papers, and to investigate the truth of the said charges, and to report to this House the facts, the evidence, and the conclusions of the committee thereon. And

Resolved, further, That the said committee have leave to sit during the sessions of this House, and that they be and hereby are requested to report to this House with all convenient speed.

Mr. Dean moved to amend said resolutions by striking out the name of Gilbert Dean and inserting in lieu thereof the name of Saxton Smith.

Mr. Van Buren accepted the amendment.

Mr. Sherwood moved to amend the resolutions by striking out all after the word "whereas," and inserting as follows:

"Certain resolutions were passed by this House on the 5th day of February, to the effect that the House would elect a committee to investigate any specific charges that might be made by any member against the official conduct of Hon. T. C. Callicot as a member of this Assembly; and whereas, Hon. T. C. Fields has presented charges, with specifications, against the said member; therefore,

Resolved, That a committee of five be appointed by the House to investigate all the charges made against the said T. C. Callicot, in his official character as such member, so far as such charges and specifications are in conformity to the resolutions aforesaid, and the action of the House in relation thereto; and that said committee have power to send for persons and papers, and that they report to this House the evidence taken by them, with their conclusions thereon.

Resolved, That such committee consist of Mr. Prindle, of Chenango; Mr. S. Smith, of Putnam; Mr. P. E. Havens, of Essex; Mr. Lake, of Chautauqua, and Mr. Talman, of Westchester."

Debate ensued, when Mr. E. Hopkins, Jr., moved the previous question.

Mr. Speaker put the question, "Shall the main question be now put?" and it was determined in the negative.

Mr. Bemis moved that the further consideration of the subject be postponed until Friday evening next at half-past seven o'clock, and that it be made a special order at that time.

Debate again ensued, when Mr. Oswald moved the previous question.

Mr. Speaker put the question, "Shall the main question be now put?" and it was determined in the affirmative.

Mr. Speaker then put the question whether the House would agree to said motion of Mr. Bemis, and it was determined in the negative, two-thirds of all the members present not voting in favor thereof.

Mr. Speaker announced the question to be on the amendment of Mr. Sherwood.

Debate further ensued, when Mr. Oswald moved the previous question.

Mr. Speaker put the question, "Shall the main question be now put?" and it was determined in the affirmative.

Mr. Speaker then put the question whether the House would agree to said amendment of Mr. Sherwood, and it was determined in the affirmative.

When the name of Mr. Clark was called, he asked to be excused from voting, having paired off with Mr. Post. Mr. Clark was excused.

When the name of Mr. P. E. Havens was called, he asked to be excused from voting, having paired off with Mr. S. Smith. Mr. P. E. Havens was excused.

When the name of Mr. Mayham was called, he asked to be excused from voting, having paired off with Mr. Prindle. Mr. Mayham was excused.

When the name of Mr. Robinson was called, he asked to be excused from voting, having paired off with Mr. Paulding. Mr. Robinson was excused.

When the name of Mr. Skinner was called, he asked to be excused from voting, having paired off with Mr. Trimmer. Mr. Skinner was excused.

When the name of Mr. F. B. Smith was called, he asked to be excused from voting, having paired off with Mr. McShea. Mr. F. B. Smith was excused.

When the name of Mr. Talman was called, he asked to be excused from voting, having paired off with Mr. Davis. Mr. Talman was excused.

The name of Mr. Lake having been called, and he having voted,

Mr. Fields raised the point of order, that Mr. Lake being named in the resolution as a member of the committee, was by the rules of the House debarred from voting.

Mr. Speaker decided the point of order not well taken.

Mr. Speaker then put the question whether the House would agree to said resolution, as amended, and it was determined in the affirmative.

Mr. Fields moved that said committee be an open committee.

Mr. Parker moved that said motion be laid on the table.

Mr. Speaker put the question whether the House would agree to said motion to lay on the table, and it was determined in the negative.

Mr. Speaker then put the question whether the House would agree to said motion of Mr. Fields, and it was determined in the affirmative.

On motion of Mr. Fields, at eleven o'clock, the House adjourned.

THURSDAY, *March* 12, 1863.

The House met pursuant to adjournment.

Prayer by Rev. Mr. Morrow.

The minutes of yesterday were read and approved.

Mr. Talman rose to a question of privilege, and stated that having been elected by the House as a member of the committee appointed to investigate the charges against the Speaker, he asked to be excused from serving upon that committee.

Debate ensued, when Mr. Speaker put the question whether the House would grant said request, and it was determined in the affirmative.

Mr. Clark was excused from voting, having paired off with Mr. Depew.

Mr. F. B. Smith was excused from voting, having paired off with Mr. McShea.

Mr. Talman was excused from voting, having paired off with Mr. Davis.

Mr. Aldrich moved to reconsider the vote just taken, and that that motion be laid on the table.

The Speaker put the question whether the House would agree to said motion to lie on the table, and it was determined in the negative.

Mr. Speaker then put the question whether the House would agree to said motion to reconsider, and it was determined in the negative.

Mr. Fields moved that Mr. Mayham be appointed to serve upon said committee in place of Mr. Talman, who has been excused.

Mr. Sherwood moved to amend said motion by striking out the name of Mr. Mayham and inserting in lieu thereof the name of Mr. Clark.

Debate ensued, when Mr. Andrus moved to amend by striking out the name of Mr. Mayham and inserting in lieu thereof the name of Mr. Weaver.

Debate again ensued, when Mr. Speaker put the question whether the House would agree to said motion of Mr. Andrus, and it was determined in the affirmative.

Mr. S. Smith moved that he be excused from serving upon said committee.

Mr. Speaker put the question whether the House would agree to said motion, and it was determined in the negative.

Assembly Journal, 1863, pages 447 to 452.

April 4th, 1863.

Mr. Fields rose to a question of privilege, relating to the proceedings of the committee appointed to investigate the charges preferred against the Speaker, and offered in connection therewith a resolution.

Mr. Speaker decided that the resolution could not be offered as a question of privilege.

Mr. Fields appealed from the decision of the chair.

Debate ensuing,

Mr. Sherwood moved the previons question.

Mr. Speaker put the question, "Shall the main question be now put?" and it was determined in the affirmative.

Ayes, 51. Noes, 35.

Mr. Speaker then put the question, "Shall the decision of the

chair stand as the judgment of the House?" and it was determined in the affirmative.

Ayes, 48. Noes, 34.

Assembly Journal, 1863, pages 790, 791.

MAJORITY REPORT OF SELECT COMMITTEE.

April 16*th*, 1863.

Mr. Prindle, from the select committee appointed to investigate the charges against Theophilus C. Callicot, submitted a majority report, in writing, which was laid on the table and ordered printed.

REPORT OF THE MAJORITY OF THE SELECT COMMITTEE, APPOINTED TO INVESTIGATE THE CHARGES MADE AGAINST T. C. CALLICOT, MEMBER OF ASSEMBLY FROM THE FIFTH DISTRICT OF KINGS COUNTY.

IN ASSEMBLY, *April* 16, 1863.

"*Whereas*, Rumors of improper official conduct, on the part of the member of this House from the fifth district of Kings county, have been circulated; and

"*Whereas*, This House desires a full investigation of every distinct charge against the said member, of such conduct; therefore,

"*Resolved*, That whenever a *specific charge* shall be made against such member, of corrupt or criminal conduct in his official character, which charges shall be in writing, and signed by a member of the Legislature, stating that he, the member so signing, believes the same to be true, and giving the facts and circumstances upon which said belief is founded, and which charges shall appear to demand investigation, then a committee of five' shall be elected by this House, with power to send for persons and papers, and to inquire into such charges, and to report to this House the evidence, and the conclusions of the committee thereon."

STATE OF NEW YORK:
IN ASSEMBLY, ALBANY, *March* 11, 1863.

Whereas, Certain resolutions were passed by this House on the fifth day of February, 1863, to the effect that the House would elect a committee to investigate any specific charges that might be made, by any member, against the official conduct of the Hon. T. C. Callicot, as a member of this Assembly; and

Whereas, The Hon. T. C. Fields has presented charges with specifications against said member; therefore,

Resolved, That a committee of five be appointed by the House to

investigate all the charges made against the said T. C. Callicot, as such member, so far as such charges and specifications are in conformity to the resolutions aforesaid, and the action of the House in relation thereto; and that said committee have power to send for persons and papers, and that they report to this House the evidence taken by them, with their conclusions thereon.

Resolved, That said committee consist of Messrs. Prindle, of Chenango; S. Smith, of Putnam; P. E. Havens, of Essex; Lake, of Chautauqua, and Weaver, of Oneida.

Resolved, That said committee be an open committee.

By order. J. B. CUSHMAN, *Clerk.*

The select committee, appointed to investigate the charges against T. C. Callicot, member of Assembly from the fifth district of Kings county, respectfully reports to the House the evidence taken and the proceedings had before the committee.

The evidence taken, in the opinion of the committee, establishes the following facts:

That Mr. Callicot first became a candidate for Speaker of this House, and was voted for as such on the sixteenth day of January, 1863; that on Saturday, the seventeenth day of the same month, the Assembly took a recess without having elected a Speaker, and that during that recess, and on Monday, the nineteenth of said month, Mr. Thomas Hope, of Brooklyn, the son-in-law and agent of Mrs. Mary A. Wood, also of Brooklyn, called upon Mr. Callicot, at his room in Congress Hall, in Albany, for the purpose of obtaining payment of a debt of twelve hundred dollars which Mr. Callicot then owed Mrs. Wood. That Mr. Hope threatened to use a certain document against him, which he had in his pocket, addressed to Hon. T. C. Fields, the character or nature of which he did not state to him, unless he settled the claim that day, and Mr. Callicot finally promised to telegraph to him at New York next day in relation to the matter; that Mr. Callicot then sought the legal advice of Reynolds, Cochrane and Harris, a law firm of the city of Albany, and Mr. Hamilton Harris, one of the members of the firm, called upon Mr. Callicot on the afternoon of the same day, the nineteenth of January, at his room in Congress Hall. That Mr. Callicot then stated to him his circumstances, in relation to the claim of Mrs. Wood, and the threat that had been made, and Mr. Harris advised him that he had better pay the demand, Mr. Callicot saying that he thought he could borrow the money of his landlord or other friends; that on the following day Mr. Harris again called upon

Mr. Callicot, and upon learning that Mr. Callicot had not been able to borrow the money, offered to loan him twelve hundred dollars to pay the demand, and Mr. Callicot accepted the offer, and telegraphed to Mr. Hope to come up; that Mr. Hope came up immediately, and remained all night at Congress Hall; and on the following morning, the morning of the twenty-first, Mr. Harris called upon Mr. Callicot, and loaned him one thousand two hundred dollars, in pursuance of the offer made on the previous day, and took his note on demand for that amount, and that Mr. Callicot immediately thereafter paid Mr. Hope the claim of Mrs. Wood. That there was nothing said at either of the interviews between Mr. Harris and Mr. Callicot, by either of them, in relation to the official influence, action or votes of Mr. Callicot, as a member of Assembly or Speaker, or in any manner whatever; that neither before, nor after, nor at the time of any interview or interviews, between Mr. Callicot and Mr. Harris, was there any argument, arrangement or understanding, express or implied, the money was paid to Mr. Callicot as a consideration or motive for his official action, influence or votes as Speaker, member of Assembly, or any other manner; or that he should become the candidate or nominee of any party or parties, he having been nominated and voted for, for Speaker, several days previous to Mr. Hope's coming to Albany to obtain the claim of twelve hundred dollars, which Mr. Callicot borrowed the money to pay.

Ira Shafer, Esq., of Albany, appeared before the committee as counsel, and conducted the prosecution, and Hon. Lyman Tremain and Hon. C. B. Cochran, appeared before the committee as the counsel of Mr. Callicot, and conducted the defense. Previous to the taking of any testimony, Mr. Tremain, as counsel for the defense, objected to any investigation of matters alleged to have transpired prior to the election of Mr. Callicot as a member of the present Assembly and moved for a decision of the committee upon the validity of the objection. After hearing the arguments of counsel upon the question, the committee were of the opinion that the resolution appointing them limited their powers to the investigation of the official acts of Mr. Callicot, as a member of this Legislature; and that the investigation should extend as far back as the date of his election, and so decided. During the course of the investigation, the counsel for Mr. Callicot also objected to charge 8th, and the 5th, 6th, 7th and 8th specifications of charge 6th, and moved that all evidence relating to them be excluded, on the grounds stated in the written motion herewith transmitted to the House. The committee, after hearing the

arguments of the respective counsel upon the motion, were of the opinion that charge 8th, being simply "bribery and corruption, as a member of this Assembly," was not in any sense "specific," and consequently not within the resolution appointing them and that specifications 5th, 6th, 7th and 8th, of charge 6th, did not contain or express any charge against Mr. Callicott, of "corrupt or criminal conduct in his official character." The committee were of the opinion that it is not corrupt or criminal for a member of Assembly to accept and take a nomination for the office of Speaker of this House, with an agreement and understanding that his vote, influence and action should be given upon the question of the election of United States Senator in accordance with the law of the land and his sworn duty as a member of the Legislature, or that his vote, influence and action should be given upon any other question, in accordance with his duty, and it is not alleged in either of the specifications mentioned, that there was any understanding or agreement by which they were to be given otherwise; nor are there any allegations that they ever *were* given otherwise. The person or persons with whom the agreement was made were not stated in the so-called specifications, nor was it alleged for *whom* or for *what* it was agreed that his vote should be given, except that in the 6th specification there was an allegation that his vote and action were to be influenced upon the *question* of the election of a United States Senator, and in the 7th specification, upon *all questions* relating to the election of the elective officers of the Assembly, so that, in the opinion of the committee, if they had heard evidence under these pretended specifications, they would have departed from the instructions given them, which required the charges to be *specific*, and would have been groping in the dark in search of corrupt and criminal conduct not charged. For these reasons, the committee decided to hear no evidence under those specifications. It will appear by the proceedings had before the committee, herewith laid before the House, that various offers were made by the counsel for the prosecution to prove the acts and declarations of various third persons, without in any manner connecting Mr. Callicot therewith. The committee deemed it their duty, in the consideration of questions relating to the admissibility of testimony, to regard Mr. Callicot as on trial for the commission of a crime, and to be governed by the rules of evidence applicable to all judicial proceedings; they knew of no other guide by which to receive or exclude evidence, and they believe they have decided the questions of evidence raised in accordance with well settled elementary principles of law. It must be evident to every one that

the declarations and acts of others should not be given in evidence against a person, unless he was present, or in some way assented to them, or authorized them, for were it otherwise, there might be no end to the testimony, and the innocent might be quite as likely to be convicted as the guilty. It would be a hard rule, indeed, that would allow a person to perform acts and make declarations to be used in evidence against a defendant who had no *control* over the person making the declarations or performing the acts; who had no knowledge of them, and who had in no manner authorized or assented to them. It will be seen that no evidence was given, or offered to be given, showing that Mr. Callicot authorized, assented to, had any knowledge of, or was in any way or manner connected with the acts or declarations of other parties ruled out by the committee; and the committee were unable to satisfy themselves that any reason existed in this case for disregarding plain and well settled rules of evidence. The committee have heard all proper evidence offered to show that Mr. Callicot has been guilty of corrupt or criminal conduct in his official character as a member of this Legislature, or since his election, and have come to the conclusion that he is entirely innocent.

E. H. PRINDLE.
HENRY C. LAKE.
P. E. HAVENS.

It was agreed by the counsel for the prosecution and assented to by the counsel for the defense that offers of proof in writing as follows should be made and ruled upon by the committee the same as if the witnesses were produced: The said Theophilus C. Callicot attempted to commit the crime of bribery by soliciting money as a gift for his vote while a member of the House of Assembly in the year 1860; that while said Callicot was a member of the House of Assembly, in the year 1860, there had been introduced into and was then pending in the Assembly a bill entitled "An act to amend section 140, of chapter 1, title 2, of the Revised Statutes, entitled 'Of alienation by Deed;'" that one Walter S. Church, of the city of Albany, was supposed by said Callicot to have a large pecuniary interest which would be seriously impaired by the passage of such bill; that said Callicot gave the said Mr. Church to understand that he believed such bill to be wrong in principle, and that it ought to be defeated; and that said Callicot did, as a member of the judiciary committee, on the twenty-seventh day of February, 1860, make a minority report against such bill, and did state therein at length his reasons in opposition thereto,

as will more fully appear by Assembly document No. 98 of that year, reference being made thereto as a part of these offers; that said bill came up in the Assembly on the twenty-ninth day of March, 1860, when a motion was made to re-commit it to the committee on the judiciary, with instructions to amend it; and that such motion was lost by a vote—ayes, fifty-four; noes, fifty-four—said Callicot voting in the affirmative; that such bill was then put upon the final passage, and was lost by a vote—ayes, fifty-four; noes, fifty-eight—said Callicot voting in the negative, and against the passage of the bill; and that a motion was then made and agreed to by the House to reconsider the vote on the final passage; and that such motion lay upon the table; that on the fifth day of April, 1860, Mr. Bingham, having charge of the bill, called up the motion to reconsider, and it was carried by a vote—ayes, seventy-one; noes, twenty-five—said Callicot voting in the negative; that a resolution being then offered to amend said bill, it was determined in the negative by a vote—ayes forty-one, noes sixty-six—said Callicot voting in the affirmative; and that such bill being then put on its final passage, it was passed by a vote—ayes, seventy-four; noes, thirty-four—said Callicot voting in the affirmative; that, shortly after making and presenting his report in opposition to the passage of such bill, the said Theophilus C. Callicot wrote and sent to the said Walter S. Church a letter, in the words following:

CONGRESS HALL, *March* 5.

DEAR SIR.—Will you do me the favor to lend me your check for $100 for a few days? An unexpected draft has been made on me to be paid to-day, and I shall have to send home for the money.

Please send by bearer, and much oblige,

Yours truly,

T. C. CALLICOT.

That such sum of $100 was sought under pretense of a loan, but was intended by the said Callicot to be received by him as a gift and bribe to influence his vote and action upon the bill before referred to, and then pending in said House of Assembly; and that the pretense stated in such letter, "that an unexpected draft had been made upon said Callicot to be paid that day," was a fraud and falsehood; that failing to obtain said sum of $100, the said Callicot afterward increased his demand upon the said Walter S. Church to the sum of $150; and that failing also to extort this sum, he voted in favor of the final passage of the bill, which he had both reported and voted

against, as an act of revenge for not obtaining the bribe he solicited; that in proposing to receive from the said Walter S. Church, first the sum of $100, and afterward the sum of $150, it was the object and intent of the said Theophilus C. Callicot to receive such sum of money as a consideration or motive for his official vote and action, in resisting the passage of the bill before referred to; that the said Theophilus C. Callicot, after obtaining the Democratic nomination as a candidate for member of Assembly, for the 5th Assembly district, in the county of Kings, and while running as such candidate, did make application to a resident of the city of Brooklyn and president of a horse railroad company in that city, for money as a gift; that as an inducement for said president to advance and give him a sum of money, the said Callicot agreed that, in case he was elected to the Assembly, he would so vote and conduct himself as a member therein as to advance the interests of said railroad company, and would promote by his vote and action such measures as might come before this legislature, and in which said railroad company might have any interest; that the said Theophilus C. Callicot did obtain and receive the sum of two hundred dollars in money from the said president, and that he, the said Callicot, received the same as a consideration or motive for his official vote, action and influence, in case he should be elected a member of this Assembly; that said Callicot did take and receive during said session of 1860, or immediately after the close thereof, the sum of two hundred and fifty dollars for a vote cast and given by him in favor of the passage of a bill before said Legislature; that the said Theophilus C. Callicot, since the 5th day of January, of 1863, has been guilty of corrupt and criminal conduct, so as to render him unworthy of a seat upon the floor of the House; that the said Theophilus C. Callicot, in the month of January, 1863, and after he had qualified and taken a seat as a member of the House, did accept and take a nomination for the office of Speaker of the House (the same being a position of individual advantage to himself) as the candidate of the republican union party, as a consideration and motive for his official vote, influence and action as such member of Assembly; that the said Theophilus C. Callicot, in the month of January, 1863, and after he had qualified and taken his seat as such member, did accept from the republican union party, on the floor of this House, a nomination and election to the office of Speaker to this Assembly (the same being a position of profit and advantage to him, the said Theophilus C. Callicot), under an agreement and understanding that his vote and influence and action, as

such member of Assembly, should be influenced thereby upon the question of the election of a United States Senator for the State of New York to the Congress of the United States. That he, the said Theophilus C. Callicot, in the month of January, 1863, and after he had qualified and taken his seat as a member of this House, did accept from the republican union party, on the floor of this House, a nomination and election to the office of Speaker thereof (the same being a position of profit and advantage to him, the said Theophilus C. Callicot), under an agreement and understanding that his votes, influence and action, as such member, should be influenced thereby upon all questions relating to the election of elective officers of this Assembly. That the said Theophilus C. Callicot, in the month of January, 1863, and after he had qualified and taken his seat as such member, did accept and obtain from the republican union party of this House, a nomination and election by their votes to the office of Speaker thereof (the same being an office of individual advantage to him, the said Theophilus C. Callicot), as a consideration and motive for the official votes and action of him, the said Theophilus C. Callicot, as such member. That the said Callicot was guilty of bribery and corruption as a member of the Assembly in the year 1860.

[The evidence embraced in the foregoing was objected to as inadmissible within the previous rulings of the committee; objection sustained. Mr. Smith and Mr. Weaver dissenting, except as to proof of charges referring to alleged official misconduct previous to the present session.]

ARGUMENT OF COUNSEL ON THE ADMISSIBILITY OF PROOFS OFFERED BY THE PROSECUTION.

The counsel for the prosecution (Mr. Shafer) having offered to prove that on the morning of the twenty-first of January last Mr. Harris (the witness) saw Senator Low, the chairman of the republican union State central committee, and said to him that Mr. Callicot desired the sum of $1,200 as a condition upon which he would act with the republican members of the House in the organization of the House, as a condition upon which he would allow the republicans to elect a United States Senator, as a condition upon which he would, if elected Speaker, use the influence he had in electing republicans as officers of the Assembly; and that he (Mr. Harris) thought that the party had better raise the money; that he (Harris) had consulted with the most prominent republicans then in Albany and they thought the money should be raised; that he had consulted with many prominent

members of the republican party in the House, and that they were of the same opinion, and with republican senators in the Senate of this State, and they were of the opinion that the party should raise the money, and that Low assented, drew his draft as the chairman of the republican union State central committee upon the treasurer of the said committee, Mr. Isaac Sherman of New York, for $1,200, payable at sight, and delivered it to Mr. Harris with instructions to raise the money and consummate the bargain. He offered to prove each of these facts separately.

The counsel for the defendant stated the willingness of the defendant to allow any testimony in relation to his acts or any act of which he (the defendant) had any knowledge, and for which he was responsible and which he had procured, and was willing to allow any evidence of what transpired in the interview or interviews between himself and Mr. Harris, at any time. But he objected to any evidence in relation to what transpired when he (the defendant) was not present, and between other persons than himself, without his knowledge or authority or that was not communicated to him and for which he was in no manner resposible.

Mr. Cochran, in stating his objection, said:

I will state to the committee the ground of objection on the part of the defendant to this evidence being received. If the committee please, while I have the highest respect for every member of the committee, I state as the result of my own deliberate and cool conviction (because I do not think I have any feeling in this case), that the proposition contended for by the other side is so monstrous in itself that under ordinary circumstances it would strike every mind in that light. It is proposed to prove transactions between third persons with which Mr. Callicot had no connection and of which he had no knowledge, with a view of establishing his guilt, under the charges that are preferred here. Now no party is ever guilty of a crime or an offense unless the heart and conscience are in it. No man can be guilty of fraud unless he is conscious of the elements that make and constitute that fraud. But the proposition for which the other side contend, utterly destroys the foundations upon which innocence and rights are supported and upheld. They propose to prove, not that Mr. Callicot knew where or from whom the loan of money came, but to prove, without his knowledge of the fact and consent to the transaction, where the money was obtained. Let me put a case to you and upon that I desire the conscientious judgment of each member of your committee, and I will appeal by and by to the prosecutor and

ask of him his judgment also. Suppose that Mr. Smith, a member of this committee, desired a loan of $1,000, and he comes to me to procure it; and I, instead of going to a concern where they deal in genuine money, go to a place where spurious money is manufactured, and get of that concern $1,000 in this spurious money, so well executed as that when I take the money to Mr. Smith he has not the slightest suspicion that it is not genuine. I have made a loan on his authority. I take to him the $1,000 in counterfeit money and he receives it from me. He offers one of the bills for some purchases which he desires to make, and is detected on the instant, and is arrested, and $1,000 of the counterfeit money is found upon his person. Mr. Smith is indicted on the charge of attempting to pass counterfeit money, and is brought to trial. I am placed upon the stand, and by me the prosecution offers to show that I knew that the money was bogus, with a view to prove that Mr. Smith was guilty of the crime alleged against him. Would you, gentlemen, as judges on the bench, accept that testimony in that light? It might be good testimony against me, but certainly it would be nothing against Mr. Smith. Again, Mr. T. C. Fields, a member of this House, has had in his pocket since he has been a member of this Legislature, in common with nearly all the members of this House, free passes on the Hudson river railroad. Now my friend, the counsel on the other side, says, that there is a statute which provides that any man, a member of this Legislature, who receives or offers to receive or accept anything from anybody for the purpose of affecting his official action, present or prospective, as a member of the Legislature, is guilty of bribery under the law. If Mr. Fields received that ticket with the implied or express understanding or agreement that his official action was to be influenced in favor of the Hudson River Railroad Company, he is amenable to justice. If, however, he received it as a mere matter of courtesy, preserving his own independence, which is a matter known to himself alone, he is not guilty of corruption, because a question of corruption is a question of intent. But Mr. T. C. Fields has the ticket, and railroad companies do not give tickets to every man of this community under all circumstances. Now, suppose an inquiry were progressing before a committee to investigate whether he has acted honestly or dishonestly in legislation affecting the Hudson river railroad, the question is whether in accepting that ticket, he intended to act perfectly independently, and received it as a mere matter of courtesy, or whether he received it in the other aspect; and if the latter, he is guilty. Suppose that it should be offered to be proven

that the directors of the Hudson River Railroad Company had assembled before the meeting of the Legislature, and had passed a resolution declaring that they were about to issue a ticket to Mr. Fields, for the purpose of bribing him to legislate in their behalf during this session, and that that resolution, secretly passed, without the knowledge of Mr. Fields, was put upon the records of their company; and further, suppose that the fact was never communicated to him, will any gentleman contend that the proof of that action of the directors of the Hudson River Railroad Company is to be admitted in evidence to show the guilt of Mr. T. C. Fields, and to prejudice him before a committee, without first attempting to show that the intention of the directors was brought home to his knowledge? The question is, what was Mr. Field's intention in accepting it? Did he intend to accept it as a reason for favoring the company in present or prospective legislation? If the fact of the passing of the resolution was not communicated to him in any manner, certainly he cannot be punished because of the guilty intent of those whose purpose it was to bribe him, or to put him in a conciliatory state of mind, with a view of purchasing his vote or influencing his official action. If you were trying the railroad directors on the charge, that resolution would be pertinent evidence; but you would say, if you were trying T. C. Fields, that you would not allow him to be stamped with infamy by admitting such testimony as that. Would Mr. Fields not say that the committee had been packed, who would allow proof of that nature to be brought against him?

Mr. Fields.—I would say to them that I would allow it to be produced.

Mr. Cochran.—Very good; but would the gentleman allow it to be produced, and acknowledge that it was *legitimate* evidence to convict him of a corrupt intent? Because, if the testimony is not intended to convict Callicot of a corrupt intent—if that is not the purpose—then it is irrelevant for any purpose. Now I am willing that every fact and circumstance which is brought home to the knowledge of Mr Callicot, or of which he had any intimation, may be proved here; but as to transactions to which he was an utter stranger, it would be a gross outrage upon individual rights to admit them for a single moment as proof against him. It may be very pleasant for gentlemen engaged in political pursuits to understand and learn all that their adversaries have done. The feeling is quite natural, and it may be indulged in under certain circumstances; but when, under the Constitution of your State, you are trying a fellow member for a crime,

let the rules of law be applied—let there be some spot on earth where a sense of justice will rise above party feeling. I confess that I have had party feeling in my day, but never to such a degree as would lift me above the safe and sound rules of judicial investigation. Now what is the object of this testimony that is now offered? It is to show that Mr. Callicot was bribed by the republican party, through its organized agent, the chairman of the republican union State central committee. If Mr. Callicot had known where the money came from, or had made any agreement in reference to it, then the evidence embraced in the offer is entirely competent as against him. Any agreement which he made, or any knowledge which can be shown on his part of a corrupt purpose in the payment of the money, we will interpose no objection to. But we do object to all matters and things offered to be proven, of which he had no knowledge, no intimation, or reason to suppose existed. To admit such testimony, would be the grossest injustice. I am bound, in fairness, to say that I have not any doubt at all in regard to Mr. Callicot's innocence in reference to this transaction. He is nothing more to me than he is to you, but I think I know enough about this to know that, so far as that transaction is concerned, he had no knowledge where the money came from, except that it came from Mr. Harris. And they propose, in the absence of such knowledge on his part, to prove that Mr. Harris received the money from the republican union State central committee. They claim that Mr. Harris made a negotiation for Mr. Callicot.

In regard to that, I will say that, to anything Mr. Harris stated to Mr. Callicot, at any time, or any hint that he gave to him, we have no objection. But what we do object to, is proof of what Mr. Harris did without any knowledge or authority on the part of Mr. Callicot, or any intimation to him. Is there any clearer proposition than that?

Mr. Weaver.—I ask whether Mr. Harris was at that time acting, in any sense, as the agent of Mr. Callicot to negotiate the loan?

Mr. Cochran.—No, sir, in no way, except that he told Mr. Callicot that he would let him have the money; that is all that he swears to. If he was, let the prosecution lay the foundation by showing that Mr. Callicot told him to go and get the money, and that on that request he borrowed it for him. In such case Mr. Harris would have been his agent for the purpose of borrowing money; but even under that authority Mr. Harris is not an agent for the purpose of borrowing it from any particular person—from A, B, C, or D, or the chairman of

the State committee. The case that I put illustrates that. Mr. Smith authorizes me to borrow one thousand dollars, and I have authority to borrow and procure it, but is there included in that authority to borrow money, an authority to borrow counterfeit money? When I have borrowed the money and given it to him, is the fact of his having given me authority to borrow money for him proper evidence against him, if he were on trial for passing counterfeit money? Therefore, I say, in conclusion, that the proposition is so monstrous upon its face, that it must so strike everybody. There is not a political adversary that Mr. Callicot has in the world who ought not to stamp it as monstrous. It seems to me that there is no man on this committee, or present on this occasion, who, if the rule were applied to him that is sought to be applied here to Mr. Callicot, would not feel as if he was out of the pale of civilized tribunals. Does my friend, Mr. Fields, mean to say to me that the resolution of the board of directors of the Hudson River Railroad Company, which I suppose for the sake of the argument, passed in secret and without his knowledge, would be evidence to show his intent in accepting the offer of a ticket over the railroad.

Mr. Fields.—I say it would be proper evidence before this committee.

Mr. Cochran.—Not at all; if the directors were on trial, it would be proper for the purpose of proving a crime against them.

Mr. Fields.—It is for the House to pass upon what is relevant testimony, and how much it proves.

Mr. Cochran.—But this committee is not an investigating committee to investigate the acts of the republican State central committee. It was appointed to investigate into the guilt or innocence of the charges preferred against the Speaker of the House, and the committee are to determine by their report upon the proofs adduced before them whether that gentleman was guilty of the offense imputed to him or not. It may be sport to Mr. Fields, but it is death to any man, no matter who it is, or how white or unspotted his character may be, to have such rules of evidence as are proposed here to-day inaugurated when he is on trial for a crime; and therefore it is that I am surprised at the proposition.

Mr. Shafer.—Let us see precisely where we stand now, for the purpose, if such a thing is possible, of enabling this committee to pass intelligently upon the questions presented by this offer. During the first session of this committee, a motion was made by the distinguished gentleman who represents the defendant — their

distinguished client, as they choose to designate him, to limit the investigation to the official action or conduct of the defendant since the election in the fall of 1862. That motion so made (and at the same time the defendant's counsel protested that he was entirely innocent of any charges and of any of the allegations made against him in the charges and specifications presented by Mr. Fields) was granted. Then a motion was made on behalf of the defendant to strike out the fifth, sixth, seventh and eighth specifications under charge sixth, for the reasons stated by them in the remarks which they submitted to the committee (and mainly upon the ground that these specifications did not charge an offense or crime, or that if they did, they did so with such uncertainty and such generality that the committee had no right, according to parliamentary law and the rules governing criminal pleadings, to investigate it), and this motion was also granted. The committee must bear in mind also, and I appeal to every member of it who was here, and I think all were present, that Mr. Cochran in making that motion said there would be no attempt whatever to exclude evidence to sustain the charges contained in the first, second, third and fourth specifications under charge sixth, and that those charges were sufficiently explicit and sufficiently certain, and if they were proven, the defendant was guilty as charged, and ought to suffer because of his guilt. Now, what is the proposition that we make? To prove in detail, specifically, each of these allegations, specifications one, two, three and four under charge six. But we are now told when an attempt is made to prove these charges, and especially that portion of them referring to the drawing of a draft by the chairman of the republican State committee, that such testimony is incompetent and is therefore to be ruled out. It is alleged with great earnestness that it is a monstrous proposition for us to undertake to prove a single fact charged under the third specification of charge six, which I will now read. "That the said Theophilus C. Callicot, in the month of January, 1863, and after he had qualified and taken his seat as a member of this House, did receive from or through the chairman of the republican union State central committee the sum of $1,200 in money as a consideration and motive for his official influence and action as such member of Assembly." This is the charge that we make: That Theophilus C. Callicot did receive from or through the chairman of the republican State committee the sum of $1,200, and how? That is the question. We propose to show that Mr. Harris, the legal adviser and pecuniary adviser of Mr. Callicot, applied to Mr. Low, the chairman of the republican committee, to draw his draft

for that sum; that the draft was drawn; that it was delivered to Mr. Hamilton Harris; that he procured it to be discounted, and that Mr. Callicot received the avails of that draft. The charge on the one side is that the republican State committee, the agents of a great and powerful party, known as the republican union party, did advance the sum of $1,200 to Mr. Callicot for the purpose of influencing his action as a member of this House. What else do we propose to prove? That a member of the executive committee of the republican State central committee, who is also the chairman of the central committee, in carrying out that plan, drew a draft (and we say with an understanding which existed when he drew that draft), and that Mr. Harris, a member of the executive committee, procured it to be discounted; that it was paid by the treasurer of that committee; and that the money received from the draft when it was discounted was paid to Mr. Callicot. That is pretty specific. Ah, but, says the gentleman, the proposition is monstrous unless you can first prove positively that Callicot knew everything in reference to this transaction. How shall the prosecution prove knowledge on the part of Callicot? Is it necessary to interrogate witnesses by asking them, "did Mr. Callicot know of this?" A lawyer does not exist with a head on his shoulders and brains in that head (these gentlemen who represent Mr. Callicot have both), who would say that we cannot prove this knowledge by evidence of a circumstantial character; by circumstances that surround the man, and the details of the transactions as they can be elicited by the proofs. My friend (Mr. Cochran) in a very unprofessional manner has stated that he believed his client to be innocent. I will be equally unprofessional and announce my belief that he is guilty. What is the evidence of his guilt? It is that he acted, at all events until the nineteenth of January, with the democratic party, voting continuously for Gilbert Dean for Speaker; that as early as the sixteenth of January he was suspected of treachery, not only to his party, but to his constituency; a great crime, as conceded by Mr. Cochran, if not believed by Mr. Tremain.

While I regret that political questions have to be discussed, yet it is necessary to allude to them for the purpose of showing the competency and relevancy of the evidence now offered; and I say that if Mr. Callicot were on trial before a petit jury, no tribunal would exclude from the jury the testimony that we offer, as incompetent. Now, what do we find here? We find Mr. T. C. Callicot, hitherto a member of the democratic party, and refusing until the fifteenth of January, to act with the party with which he has been identified since

the twenty-third of January last, suddenly becoming a candidate of the republican union party in the House for Speaker. But who has he put himself in communication with? Did he on that day, when he saw fit to betray his constituency, seek the aid and advice of those with whom he had acted? Or did he go to a man in this city, who is second to no man in the State, in sagacity and ability, and second to no man in his party—I mean Hamilton Harris? No man wields the power, except it be his exalted brother, Senator Harris, that he does at the capital of this State. No man in the republican party (and there are eminent men it) is so well calculated by nature, and from his knowledge of men, to control the deliberations of the republican party, as Hamilton Harris. I concede that the firm of Reynolds, Cochran & Harris is not second to any firm in the State, and that if Mr. Callicot had a legal question to submit to them, it was entirely proper and praiseworthy in him to consult either of the members of that distinguished firm. Did he desire legal advice or legal counsel on the nineteenth of January last? Is it contended that any exigency had occurred in his individual affairs, which required the legal counsel of these gentlemen to serve him in his difficulties? No such proposition has been suggested. The only claim that is made, is that Mr. Hope had a demand against him, and which could have been enforced only in an action of assumpsit, It was an honest claim, and ought to have been paid, and that is made a pretext for employing eminent counsel, and it is made a pretext on the part of Mr. Callicot for the interviews which resulted in his receiving the payment of twelve hundred dollars, as we allege, from the republican party, as a condition of his abandonment of his previous political faith. Mr. Harris goes to his office, and after consulting with Mr. Cochran, he returns. Now, I say, a picture is presented there, in Mr. Callicot's room, of the most extraordinary character, even as described by Mr. Harris. Mr. Harris disclaims any intimacy with Mr. Callicot up to the nineteenth of January last; was ignorant of his financial affairs; knew nothing of his condition, and, so far as he knows, Callicot was utterly insolvent; he had no political affinities with him; and yet Mr. Hamilton Harris, who, as if he were as rich as Crœsus, and much more obliging, says: "My dear sir, I will loan you this money;" and Mr. Callicot says: "I am under very many obligations to you; I did not think of such a thing; I did not call upon you for any such purpose; you place me under renewed obligations, and I will endeavor to see you paid." Now what is the next step? We offer to prove that Mr. Hamilton Harris. after his remarkably disinterested offer to

loan Mr. Callicot one thousand two hundred dollars, went to the chairman of the republican State central committee—that a draft was then drawn by the chairman of that committee, at the suggestion of Mr. Harris, and upon consultation with him, and after a statement by Mr. Harris of what had transpired between him and Mr. Callicot; that the draft was cashed in this city, and the avails paid to Mr. Callicot; and yet, the counsel for the accused thinks it is monstrous to offer to prove what transpired between Mr. Low and Mr. Harris. I agree that if Mr. Callicot was in no way connected with the transaction prior to the time—if he was not connected with it subsequently in such form as would charge him with knowledge, that this proof standing alone, would be incompetent. But I say that it is one of the links in the chain of evidence which goes to convict him of guilt, and if you strike out what we offer to prove in this regard, you must strike out every offer of circumstantial evidence which goes to prove the guilt of a criminal. The money was obtained, and we wish to know whether it was an honest transaction, and whether Callicot did not know that it was obtained under circumstances which demanded secrecy? Hamilton Harris, when engaged in the ordinary affairs of life, walks with an open brow, and conceals nothing from his fellow men. But here we find somebody nosing and mousing about Congress Hall on the morning of the twenty-first of January, and we hear the mysterious rapping at the door of Callicot's room, and a servant announcing that Mr. Harris desires to see Mr. Callicot. Mr. Hope, who is seated there at breakfast, is desired to withdraw. This is pregnant with meaning. If Mr. Hamilton Harris, in the kindness of his heart, proposed to make an honest loan of one thousand two hundred dollars, and there had been no suspicion on the part of Callicot as to where the money came from, or what was the consideration or condition upon which he received it, he would have said to Mr. Harris, "walk in," and have said to Mr. Hope, "here is my generous friend, Mr. Harris, whom I never knew before, and bankrupt as I am, utterly unable as I am to pay a single dollar of my debts, yet Mr. Harris has generously offered me a loan of $1,200 to enable me to pay the claim of Mrs. Wood." That would have been the conduct and actions of an honest man; but if he supposed it had been obtained or procured for him from Mr. Low, the chairman of the republican union State central committee, upon the condition of his selling out to the republican party, he would have acted just as he did; would have asked Mr. Hope to withdraw, and would have gone through the mysterious process, in secret, of being transferred

from the democratic party, through the agency of Mr. Harris, to the republicans. "Withdraw if you please, Mr. Hope," and Mr. Hope does withdraw. Harris comes in and remains five minutes and the money is paid. Now, I would like to know, whether it is not competent to show, that Mr. Harris left him on the morning of the twentieth of January and said he could get the money; that he went to the chairman of the State central committee and obtained from him a draft drawn on the treasurer of the committee in New York, for the precise amount which he was to pay to Callicot; that the draft was cashed; that Callicot got the avails, together with all the antecedent and subsequent circumstances? But where do we next find him? Going body and soul, if he has the latter, over to the republican party; elected Speaker in the organization of the House; abandoning entirely the party which had elected him to power; voting in such a manner upon the question of United States Senator as to enable the republicans to elect their candidate. If these circumstances; if this defection from the democratic party and this going over to the republicans; this receipt of $1,200 under these circumstances, is not sufficient for this committee to say that the proof we offer is competent; then, although an angel from Heaven should come down and affirm its competency, you would reject it. Let us see what the authorities say. I brought up with me a law book which I shall read from, for there has been, at all events, an intimation on the part of the committee of an intention to conform to well established rules of law, and I have no reason to believe that, so far as these rules of law have been understood, there has been any conformity to them. I read from Wills on Circumstantial Evidence, page 311. [The counsel here reads several extracts and proceeds.] And just so the conviction that Callicot received this money knowing whence it came, follows the fact that Mr. Low drew the draft and that it was negotiated by a member of the republican State central committee. Having received the money he went body and soul over to the republican party. There is not an honest man on the face of the earth, who, after learning these circumstances, would dare to say that he had not at least a suspicion that such was the fact; or if there is such a man I trust he does not belong to the city and county of Albany. And yet my friend says it is monstrous, unless you can prove that Mr. Harris said to him, "I am going to get this draft from the republican State central committee," and having received it he must proclaim to the world and to Callicot that he has received $1,200 as the avails of the draft so drawn. The other day, on the argument on the point as to

what motive he had for the application for this money, the counsel said it was competent to show any circumstances for the purpose of proving that he, in effect, received the money. If there was any dispute about that fact, he said it was competent to resort to circumstances. I am not mistaken, because my memory is good upon that point. He made a concession then, which, if he adheres to now, entirely destroys his argument, because, if it is once established that this money comes through republican sources, from the republican union State central committee, and he subsequently acts with the republican party, I should like to know if there were not a few circumstances that tally with the charges made? First, he received the money; second, he received it from a member of the republican union central committee; and third, he acted with the republican party. I concede that it is entirely proper, if they can, to give to this transaction the character of a loan. That is proper and competent. But they propose, at the very threshold of the case, to shut out evidence by which we attempt to establish that he received it with guilty knowledge as a bribe. The counsel says: "Produce the receipt for the money, or the agreement under which it was received, that is all you have to do." But the difficulty between the counsel and myself is, that we desire, and have expected to prove it by circumstances, while they require that it shall be proven by specific agreement. Has it come to this, that you cannot prove the existence of guilty knowledge by showing the transactions of the party, before and subsequently, which are entirely consistent with the theory that his knowledge was guilty? In the case which the counsel supposes, of the taking of $1,000 in bogus money to the borrower, I concede that if the simple fact were that he received that bogus money without any circumstances, either antecedent or subsequent, showing guilty knowledge on the part of the gentleman he has named, the fact alone would not be sufficient evidence to prove guilty knowledge; but if, in addition to that, you find that the gentleman named had dealt in bogus coin, that he had been a confederate of Mr. Cochran, and that Cochran, acting in persuance of that confederacy, had obtained the money, I ask whether the proof offered under these circumstances would not be competent, as one of the links in the chain of evidence? I will further read from Wills on Circumstantial Evidence, from page 239. [The counsel here read several extracts, and resumed his remarks.] Now, if one single circumstance, standing entirely alone, would show the innocence of the defendant, yet if a dozen other circumstances connected with the first, go to prove his entire guilt, the latter should weigh, and should

be received. We have not contended that the simple receipt of $1,200 by Callicot, without any circumstances preceding or subsequent, would prove his guilty knowledge; but we say, that when we regard his previous political course, when we regard his interview with Mr. Harris, when we regard the proffer on the part of Mr. Harris to lend him the money, the source from which he obtained it, the person who received it, the secrecy which is sought to be maintained about it, the course which he has pursued since he received it, they all point to him with one unerring aim, and cry out that he is guilty; and to strike out either one of those circumstances is to strike out a material link in the chain of evidence with which we propose to surround him. We say, in the third specification that he did receive from or through the chairman of the republican union State central committee the sum of $1,200 in money. That, the learned counsel stated was specific. That, you said we were at liberty to prove, did you not? The counsel said they should make no motion to strike out any proof upon that point; yet, when I have got a witness on the stand to prove that he got that sum from Low, we are told that the point has been decided against us by the previous ruling, and upon this pretense our evidence is to be rejected. They say we cannot prove any such thing. It may have been determined that we shall not prove the fact; but it has not been determined by the committee of the Assembly. The determination may have been made, but not by the decision of the committee as announced here. I well know the delicacy of these gentlemen—their extreme sensitiveness when any question involving their party's reputation is raised; it may be that party exigencies demand exclusion of this evidence. Here is a gentleman of your own party on the stand, by whom I can prove that Senator Low, for the purpose of bribing Callicot, paid Mr. Harris the sum of $1,200; and although it was the impulse of Mr. Cochran to allow me to give this proof, yet his senior, Judge Tremain, thought it advisable, under all the circumstances, that it should be shut out. I say that the witness, now upon the stand, can prove the charge made in pursuance of the resolution of February 5, which they have not sought to strike out, and the specifications of which they have said were sufficiently explicit, to wit: That Callicot received from or through Mr. Low, the chairman of the republican State central committee, the sum of $1,200 in money. I have a member of the executive committee of that committee to prove it, and the draft, too, is here. But the counsel say, you cannot prove that, because Mr. Callicot did not know it. I propose to prove his know-

ledge; to prove his guilt by circumstances. No one has hitherto supposed on the part of the prosecution, nor has the distinguished member, Mr. Fields, who preferred these charges, supposed for a moment that the guilt of Mr. Callicot could be proven by a direct compact or agreement, either in writing or between the distinguished lawyer and Callicot, who has since become Speaker. I deny that the committee has made any decision which controls this particular offer. I deny that there has been any decision made which will prevent us from showing the facts alleged in specification three, and even specification four, which I will read: "That the said Callicot had received from or through the chairman of the republican union State central committee the sum of $1,200." In one charge he is alleged to have received the sum of $1,200 from the chairman of the republican union State central committee, as a motive for his influence and action as such member of the Assembly. In the fourth, the charge is that he received the sum of money from the same party as a motive for his action upon the question of electing United States Senator. They say that we shall not prove that this money came from the republican union State central committee, the money that was paid to Callicot. Why? Because it may be a little inconvenient for the majority of this committee to hear proof upon that point. That is the only reason. It is not because it is not charged in the specification; it is not because the circumstances do not show the guilt of Mr. Callicot; it is not because it is not in accordance with well defined legal rules. Judging from Callicot's antecedent and subsequent course, the manner in which he put himself in communication with Mr. Harris, his secrecy when Hope was there, his flight up stairs, I think that it is apparent that Callicot knew all about the transaction. At all events it is competent evidence as tending to show that fact, and should therefore be received. In protesting, unsuccessfully, hitherto against the exclusion of evidence, I have claimed that Mr. Callicot is not on his trial according to the meaning of that term as used by the gentleman on the other side. They hold that Mr. Callicot is on trial; they claim to have erected this committee into a tribunal, having jurisdiction of the most extensive character, to wit, to try and pass judgment upon a fellow member of the House. I deny it. You are simply taking evidence and reporting it to the House; and under the impression that you have assumed these high functions, you have hitherto been impelled to exclude evidence and grant motions on that view; and it is possible that that theory may have an influence upon the committee at present. But I

submit with all candor, that so far as these charges, in the third and fourth specifications are concerned, that he received this money from or through the chairman of the republican union State central committee, there is no power on the part of this committee to exclude this evidence; that you have no right to say "we will not receive this evidence," but that you are bound to receive it; that this fact is specifically charged, and we offer the evidence to sustain it; and you are directed, by the resolution appointing you, to receive the evidence and report it to the House. To do otherwise would be to array yourself in opposition to the direction of the House, as contained in the resolution of February fifth and the eleventh of March. The question that was discussed last evening had no sort of relation to the one now before the committee.

I knew, however, that it would be claimed that it would shut off all evidence of transactions, unless it could be shown that Mr. Callicot was upon the heels of Mr. Harris, and that he made to him a disclosure of all that was said; that they would contend a man should be deemed guiltless, except so far as it was shown by positive proof that he had an agency or knowledge of the transaction, showing his guilt. They may show that he had no connection previous or subsequently. But when Mr. Callicot determined to play the part he did, he did it with a full knowledge that he must abide the consequences. If they are serious, he is the author of his own misfortunes. If, when Mr. Callicot determined to betray the party that placed him in power, he also determined to add to his treachery, the crime of bribery, on his head be the consequences, and it is not in the power of this committee, even by excluding this offer, to shield him from the fate that awaits him at the bar of public opinion.

Mr. Havens.—Does the counsel claim that greater latitude should be given here than should be given in the introduction of testimony on a trial under an indictment?

Mr. Shafer.—I do; and it is proper that I make this also. I claim, in the first place, that the rules of criminal pleading applicable to an indictment, are not applicable to the charges and specifications referred to this committee. The committee ruled otherwise; and in conformity with that ruling Mr. Cochran said that the remaining charges and specifications were in every respect definite and certain, and there would be no attempt to strike them out; and that the prosecution was at liberty to prove every fact contained in them. I contend that when it is charged that Mr. Callicot received from or

through the chairman of the republican union State central committee the sum of $1,200 in money, an offer to prove clearly, definitely and certainly this fact, is an attempt to prove the charge and the specifications under it, and within the rule prescribed for the prosecution by Mr. Cochran.

Mr. Shafer having concluded his remarks, Mr. Tremain proceeded to address the committee. He read:

If the committee please.—It is not my intention to occupy any considerable portion of your valuable time in a continuation of the discussion upon this question. There are two reasons, which, in my judgment, render any such discussion a waste of time, and unnecessary and inexpedient. The first is, that the whole case was fairly presented in the opening argument of my associate. It was an argument that was calmly, clearly and fairly presented. It placed our objection upon the true grounds; and grounds which, in my judgment, will strike the mind of every lawyer as utterly unassailable and impregnable. The other reason is, that the discussion yesterday in relation to a kindred question, covers the question involved in this case. It has been deliberately adjudged by this committee, and by that judgment, I doubt not, this committee will stand. My friend (Mr. Shafer) found it convenient to-day to take a position which does not precisely harmonize with the position he took yesterday. In the course of the very elaborate argument on the point we then raised, so far as it related to the objects of evidence, he foreshadowed the offer of evidence in relation to a draft drawn by Mr. Low, for the purpose to raise money to pay over to Mr. Callicot, and I then told him that I could not say whether I should take an objection to proof on that point or not; that it would depend upon whether he laid the foundation to make it competent; that if the evidence offered was unconnected with Mr. Callicot, as was the case in regard to the evidence offered last night, I should object to it, and should be recreant to my duty if I did not. We learn now, after that judgment has been pronounced, which my learned friend said foreshadowed the judgment that was to follow, and after there has been an argument before this committee of a kindred question, that there has been nothing decided in relation to the admissibility of the acts of third persons, wholly disconnected with Mr. Callicot, and for which he was in no manner responsible. I leave the decision in the hands of the committee, simply declaring that it will hardly do to blow hot and cold in the same breath. It will be for the committee to decide

whether there is, in reality, any difference in principle, between this question and the one fully discussed yesterday afternoon. It is a subject of comfortable reflection to those who are discharging a professional duty in defense of Mr. Callicot, that this investigation is not to be conducted wholly regardless of legal rules. If this case were to be tried by political prejudices; if that fiendish party spirit which is threatening now to break in pieces the ties which bind these States together, and, in my judgment, threatening more danger than secessionism itself; if that bitterness of spirit, which, when it cannot carry its point in the election or in preventing the election of a United States Senator, would leave the great State of New York with but one Senator to represent its interests on the floor of the United States Senate, and to respond to the demand for wisdom in determining plans to crush out this fearful rebellion; if that party spirit, I say, which has produced such results in the past, were to be the guide in the deliberations of this case; or if vehement declamation and partisan epithets were to control and influence this committee in its decision, either on interlocutory questions, or in the final disposition that may be made of this case, then Mr. Callicot stands condemned without a trial, and you are guilty of participating in an unmeaning farce, in authorizing him to appear here by counsel. The form of charges and specifications is a mere idle ceremony, which might have been better dispensed with in the start. Adopting the doctrine, that (until the question was put by Mr. Havens) seemed to rule, that Mr. Callicot is not on trial, and therefore the learned counsel is not restrained by the safeguards which protect the person, the property and the liberty of the citizen in the courts of law, and I grant that there would be safety against these prejudices for any one who has dared to occupy the position that Speaker Callicot has. But I came here to say that Mr. Callicot's rights shall be protected and defended under the Constitution and the laws, and that if he were the veriest and most degraded human being in the community, the shield of the law is over him, and before partisan spirit shall strike him down, before he shall be made a victim, before a conspiracy that has been baffled and seeks a victim in Mr. Callicot, shall succeed—if it shall—it shall be because there is no force and power on the part of counsel to prevent such results. I stand here to claim for Mr. Callicot those rights and privileges which belong to every citizen of the State of New York, who may be found in any part of our territory. And I say, again, that the question which was discussed yesterday, as to whether private conversations between Mr. Hamilton

Harris and his partner, Mr. Cochran, of which conversations Mr. Callicot had no knowledge, were competent evidence, and which the committee decided adversely to the prosecution, is in principle the same question that is raised here to-day, as to the competency of proof of conversations between Mr. Harris and Mr. Low, of which Mr. Callicot had no knowledge. The venue is changed—the issue is precisely the same. It is here deliberately and gravely proposed to prove that Mr. Harris poured into the ears of Mr. Low a story such as is here put on record, to the effect that republican Senators, republican members of the House, and republican citizens of the city and county of Albany, came to the conclusion that there was a case where they might bribe a member of the Assembly; that thereupon the chairman of the republican State central committee drew a draft to raise the money to bribe the member, and it is gravely urged that proof of that kind is competent, not as against the republican central committee, or Mr. Harris, for they are not on trial, but as against Speaker Callicot, who at this time was far removed from them, and when there is not the slightest proof that any of the parties referred to were acting either on his, Callicot's behalf, under his authority or with his knowledge. This is the position occupied on the part of a prosecution carried on in the name of the great State of New York; a State where it is said we are so careful of personal rights that a man must not be arrested even by the arm of the President, without the full warrant of the law; where the *habeas corpus* must not be for a moment suspended. But the learned counsel, and those for whom he acts, who are thus earnest in their advocacy of personal rights, say that when a man has dared to prove false to his party machine, and is placed on trial for the highest crime known to our law, you are to receive anything and everything which counsel see fit to offer in the way of proof; that you are permitted to inquire who elected him; whether he came here as a democrat or as a republican; how he is acting; with whom he is acting, and you are therefore to record your decisions on interlocutory questions; not as honest men, acting under the responsibilities of your oaths of office, but as partisans. In other words, Mr. Callicot is to be stricken down because, according to the argument of the counsel, he has been elected by democrats and is no longer acting with them. Where is the evidence before this committee in relation to those facts upon which my friend has argued? What is there in regard to the past course or conduct of Mr. Callicot? We are here to try this investigation in accordance with evidence, and the whole argument of the learned counsel, which he has so vehe-

mently addressed to the committee, proceeds upon an assumption of facts not in evidence at all.

Mr. Shaffer.—I based my argument upon the proofs which we propose to offer, which will sustain everything I say, if the offer is entertained.

Mr. Tremain.—Proofs you propose to offer? Let us take the offer as it arises. We are now discussing the question as to the admissibilty of this evidence, for my learned friend admits that it is only competent by reason of some evidence to be offered. Now, I protest, as I have from the commencement of this investigation, against this attempt, on the part of the counsel, to mix up in this serious and solemn matter, which is more important than life itself to the accused party, these continual harangues and appeals about party. They are unworthy of the place. They are appeals which should no more be heard here than they should be heard before a jury. If this man were on trial for his life before a court of justice (and he is on trial for that which is dearer than life—for his conviction would result in his being confined in the State prison for ten years, and would forever prevent him from again holding any office of honor or trust), such appeals would be excluded under our Constitution and our laws. I say again that it is an example that ought not to be followed, and although I find the temptation very strong to follow the gentleman into a discussion of those extrinsic matters which do not appear in evidence, yet I am restrained by my own self-respect, and by a proper regard for the dignity and the propriety of this committee. I will not, therefore, go into a discussion of matters that have no relevancy to the investigation here, but will present the thoughts that occur to my mind as having a bearing upon the character of this prosecution. I come back, again to the case. Is not Mr. Callicot on his trial? Where, except here, is evidence to be heard either for or against him? This case is referred to you, not only with power to take and report the evidence before you, but to report your conclusions—your verdict—thereupon; and everybody knows that in the ordinary course of parliamentary proceedings in this country, where the business of legislation is done by committees, that your report will come before the House with the just and controlling weight and influence that would belong to such a report. Not a trial? If the investigation before this committee is not a trial, Mr. Callicot can never be on trial. As swift as the thunder follows the lightning, to use the language quoted by the gentleman, from the authority on circumstantial evidence, may come the judgment of this committee against the accused, and he leaves

the chair—the highest position in this House—a doomed and blighted man, branded by the report of a committee of his peers (and that report confirmed, as it naturally would be by the judgment of the House), as guilty not only of infidelity to his party, but as guilty of the crime of receiving $1,200 as the consideration for his official influence and action. And yet, forsooth, it is contended here that Mr. Callicot is not on trial, and all kinds of evidence which may be thought proper are to be offered, even though inadmissible by the clearest rules of law. The case presented by my associate (Mr. Cochran) in reference to the supposed secret resolution passed by the directors of the Hudson River Railroad Company, to influence the action of Mr. Fields, by reason of giving him a free pass, was very appositely put. Yet Mr. Fields said that that resolution would be proper evidence to be received to prove him guilty of bribery and corruption, and should, therefore, be received.

Mr. Fields.—I did not say so; I desire that what I said should be properly presented.

Mr. Tremain.—Does the gentleman shrink from the responsibility? Does he admit that it would not be competent evidence?

Mr. Fields.—I said that it would not be evidence before a court, but in an investigation before a committee, under parliamentary rules, it was competent to be received.

Mr. Tremain.—Then the gentleman concedes the whole case I am discussing. The question is, whether it is competent or not. It is no part of my business to stand here and defend this committee, or the House by which they were appointed, from the insults hurled against them by the gentlemen. This committee is capable of taking care of itself, and the House, for whom the committee is acting, is capable of taking care of itself. It is no part of my business to appear for them; but when the counsel says that, according to your ruling, the evidence suggested would be incompetent; then what need of discussion? this evidence offered falls to the ground. I deny, where a committee is appointed under specific resolutions like these, that there is any parliamentary rule which allows a blind, groping inquiry relative to anything and everything, and affecting everybody, whether they are the persons charged or not. I do not deny that the House has the power to appoint a committee, and to give them power generally to investigate into all acts of corruption, for the purpose of applying a remedy, by some legislation, in regard to the subject. But this committee bears no analogy to a general investigating committee. If it did, there would be no counsel employed upon either side, for

the purpose of presenting the case to the committee, and I understand that the counsel concede that this case should be governed by the rules of evidence that prevail in the courts.

Mr. Shafer.—I said that they should, under the rulings of the committee.

Mr. Tremain.—Do I understand that this discussion is not to proceed in conformity with the decision of the committee? Is that the gentleman's idea?

Mr. Shafer.—I said that the committee had adjudged that there must be the same certainty in the line of proof that must exist on a trial under an indictment. The gentlemen said that they would not move to strike out the first, second, third and fourth specifications under charge six; that they were as specific as was required in an indictment.

Mr. Tremain.—I ask again, under the concession substantially made upon that point by the gentleman, and by the prosecutor, that evidence of a particular character, entirely analogous to this, would not be competent under the ruling of the committee, whether we are discussing this case for the purpose of influencing somebody else beside the committee; for, if we are, I desire to say that I have no taste for a mere political roving investigation, to see who may produce the greatest influence on the public mind outside of this case. I have higher duties than to enter upon so frivolous and puerile an investigation; my duties are simply in relation to the guilt or innocence of Mr. T. C. Callicot, of the charges which are here presented. I say again, as my associate has said, that we have not made any objections at all to the form or the substance of the first, second and third specifications under charge six. When we were discussing the question as to sufficiency of the specifications, Mr. Cochran said, we stand by them; we make no objection to the specifications at all, nor do we now. We challenge proof of the allegations contained in them, by legal evidence going to show the guilt of Mr. Callicot. What is the third specification of the sixth charge? It is that he, Callicot, after he had qualified and taken his seat, "received from or through the chairman of the republican union State central committee the sum of $1,200 in money." There my friend stops reading the specifications, and I will proceed to read the remainder, which is that he received the money "as a consideration and motive for his official influence and action as such member of the Assembly." No objection is taken to that specification, either as to form or substance. Now you have a witness on the stand, whom I am happy

to learn was the gentleman referred to by Mr. Fields, as a highly esteemed and distinguished gentleman, and who was the gentleman with whom Mr. Callicot was in communication, and the gentleman who let Mr. Callicot have the $1,200, and yet, if Mr. Callicot be guilty of this charge, that gentleman is equally guilty, and liable to be imprisoned in the State prison. Now with such a gentleman on the stand as a witness, so indorsed by the prosecutor, a gentleman prepared to prove the whole *corpus delicti*, if there was any, who will not dodge anything, who seeks to evade nothing, is ready to meet all the consequences which may follow from whatever is disclosed with which he was concerned, and yet, instead of walking up to the line and proving exactly what the transaction was to which Mr. Callicot was a party, it is proposed to put the chairman of the republican union State central committee on trial, and prove what has transpired in their secret deliberations. You have been engaged nearly all of yesterday, and nearly all of this afternoon in going around with your preliminaries as if there was something wonderful and mysterious in this transaction, instead of asking Mr. Harris to state distinctly, fairly and honestly, and without mental reservation, everything that transpired between him and Mr. Callicot. But to do that would not answer their purpose. Party must be dragged in here. An attempt must be made to inquire into deliberations between Mr. Harris and Mr. Low, without one single scintilla of evidence in the case, that Mr. Callicot knew even that Mr. Harris was a member of the republican State central committee; and with the fact staring you in the face, that the only manner in which Mr. Harris was brought into communication with Mr. Callicot was by reason of a written request sent by Mr. Callicot, not to a member of the republican State cental committee, but to Mr. Cochran, the business partner of Mr. Harris, requesting him, Cochran, to come and see him, and Mr. Cochran being engaged sent his partner, Mr. Harris. The learned gentleman speaks of the purpose of the republican central committee to bribe Mr. Callicot, but he is afraid that they will not answer his purposes as witnesses; so, instead of calling upon the members of that committee to prove the bribery, they go outside and seek to bring in conversations with third parties.

This is a secret arrangement, he says; and he assumes it is because, when Mr. Callicot was about to borrow money he requested Mr. Hope to retire from the room a moment! A most alarming circumstance! Mr. Callicot did not wish everybody to know that he was borrowing money, and all the conversation that might transpire

between them. It seems that this Mr. Hope was there with a letter addressed to Mr. Thomas C. Fields, although Mr. Callicot did not know it, requesting him, Mr. Fields, to help him collect the money. That is wonderful evidence of bribery and corruption! and in order to make it still more apparent, the republican central committee, if my friend is to be believed, send a man to negotiate who stands first in point of ability, integrity and honesty among the political men o this city to bribe Mr. Callicot! But there are outside circumstances, and yet, so suspicious, if my friend is to be believed, that they require of the committee, in conducting this investigation, to change all the ordinary rules of evidence. But, to come back to the question, if the committee please, what is it that the prosecution offer to prove? They offer to prove various communications made by Mr. Harris to Mr. Low, communications which, by every principle of civil and criminal proceedings, are regarded as inadmissible, because there is no attempt to show that Mr. Callicot had any intimation or suspicion even of the existence of those communications. Then my friend offers to show an *act*, by which Mr. Harris received the money as the proceeds of a draft drawn by the chairman of the republican union State central committee upon its treasurer, and that Mr. Harris took those proceeds and paid them over to Mr. Callicot. We have announced our perfect willingness to allow the prosecution to show that Mr. Callicot was told by Mr. Harris or by anybody else, that he requested Mr. Harris or anybody else, or that he agreed with Mr. Harris or anybody else, that the republican union State central committee might advance $1,200 for his benefit, to show that when that money came, Mr. Harris communicated to Mr. Callicot the fact that he was acting on behalf of the republican union State central committee, or that he received it from the republican union State central committee, or that the money was the proceeds of a draft drawn by the republican union State central committee or its treasurer, to show every fact that transpired between Mr. Harris (who is conceded to be a gentleman of respectability and integrity) and Mr. Callicot. To all this the doors are thrown open, but in Heaven's name confine your proofs to facts which show the guilt of the gentleman who is on trial, to his conduct and his action. Do not attempt to prove facts against the republican union State central committee, who are not on trial. We do not appear for them. It is beneath the dignity of this committee for a moment to entertain offers which are designed only to stir up the already too deep fountains of political hostility. Let there be some place where party spirit shall be hushed; and if

that place is not a tribunal where a man is on his trial, not for a political offense, but for a high crime, then we cannot hope to find it anywhere. Previous to this investigation, I never saw the gentleman who is now on trial here. I have had no sort of participation in these proceedings, out of which this bitterness has grown. I came into this case in a professional capacity, believing that no matter what might have been the antecedents of Mr. Callicot, whose character and integrity have been indorsed by his selection, by the House of Assembly, to the highest position in it, here, at least, we might try these charges according to law and according to the evidence. If I am indeed mistaken, if it is only another arena for stump speeches, and the bitterness of party feeling is only transferred from the polls to this place, then I am not here in the discharge of any duty that belongs to a participant in such a proceeding. I say that this evidence cannot be received upon any legal principles. Before any man can be held responsible for the act of a third person, you must show, that to some extent, he is the author of the act, and if that is shown, he is responsible for it. If you attempt to prove that Mr. Harris was Mr. Callicot's agent, you must first show that he had authority from his principal to do these acts, or an implied authority such as would bind the principal for the acts of the agent, and which would also make Mr. Callicot responsible. Or if you assume it to be a conspiracy, in which the act of one conspirator becomes the act of all, and for which each is responsible, you must first prove the conspiracy. It is not a question of the order of proof, for I claim that the proofs offered by the gentleman are not competent in any aspect. It is a question of fundamental right that no man shall be prejudiced by the acts and conversations of third parties, unless you first show the existence of a conspiracy between the parties to do a particular act, and then any act by a third person in the execution of the common design and purpose for which the conspiracy was formed, may be admitted.

Objection sustained; Mr. Weaver and Mr. Smith dissenting.

Assembly Documents, 1863, No. 202; see also testimony attached to report, pages 5 to 79.

SPECIAL ORDER.

Mr. Prindle offered for the consideration of the House a resolution in the words following, to wit:

Resolved, That the minority of the select committee appointed to investigate the charges against Theophilus C. Callicot be allowed to bring in a report any time this week; that the evidence and both

reports be printed, and that the whole matter be made a special order for Monday evening at seven o'clock.

Mr. Speaker put the question whether the House would agree to said resolution of Mr. Prindle, and it was determined in the affirmative, two-thirds of all the members present voting in favor thereof.

Assembly Journal, 1863, pages 1038, 1039.

MINORITY REPORT OF COMMITTEE.

April 17, 1863.

Mr. Weaver, from the minority of the select committee to which was referred the charges made against T. C. Callicot, Speaker of the Assembly, submitted a report in writing, dissenting from the views of the majority thereof, which was laid on the table and ordered printed.

IN ASSEMBLY, *April* 17, 1863.

REPORT OF THE MINORITY OF THE SELECT COMMITTEE APPOINTED TO INVESTIGATE THE CHARGES OF CORRUPTION AGAINST THEOPHILUS C. CALLICOT, SPEAKER OF THE ASSEMBLY.

The undersigned, a minority of the committee appointed by this House to investigate the charges of official misconduct preferred against the Hon. Theophilus C. Callicot, Speaker of the Assembly, by the Hon. Thomas C. Fields, a member of this House, respectfully report that they entered upon the discharge of the unpleasant duty assigned them, with a full appreciation of the responsibility of the position they were called upon to assume. While they have been actuated by a sincere desire to render entire justice to the accused, and claim to have ever been regardful of his rights, they have also endeavored to vindicate the honor, the dignity, and the integrity of this body, by bringing to light, so far as in their power, all the facts pertinent to the case under consideration.

The undersigned commenced this investigation impressed with the belief that the House desired a searching inquiry into the charges made against the Speaker, and was desirous that equal justice should be done to all parties, in order that the member suffering under the imputations made against him might be fully exculpated, if innocent, or properly punished if guilty. They did not regard it in their province to act either as counsel to shield an offender from the consequences of official misconduct, or as partisans, whose effort it should be to make innocence appear like guilt. Acting in good faith under this belief, and influenced by these motives, they have found them-

selves necessitated, in the course of this investigation, to differ with the majority of the committee upon questions involving the scope of the inquiry, and the admission or rejection of evidence.

At the outset, when the question arose as to the limit of the investigation, the committee unanimously decided that, under the resolution adopted by the House, the examination should be confined to the charges relating to the official conduct of the accused during the present session, and unanimously resolved to strike out all the charges of corruption prior to that date.

After the committee had unanimously agreed thus to limit the investigation, the counsel for the accused moved to further restrict the inquiry by striking out specifications five, six, seven and eight, of charge sixth, alleging that the votes and official action of the Speaker had been governed by the consideration of his election to the office of Speaker, a position of advantage and profit, and also charge eighth, which is as follows:

"CHARGE EIGHTH — BRIBERY AND CORRUPTION AS A MEMBER OF ASSEMBLY."

The majority of the committee ruled to sustain the motion, and thus further limit the investigation, from which ruling the undersigned minority dissented, and stated their reasons as follows:

1st. That the resolution of February 5th, under which the charges were framed, requires us to investigate all the charges substantially made, which, if true, would constitute an offense for which the accused would be amenable to the House. The charges embraced in the motion are regarded of that nature, and demand investigation.

2d. In view of the fact the committee have unanimously refused to investigate charges of alleged official corruption prior to the election of the accused as member of the House, it is held that the instructions contained in the resolution of March 11th, under which this committee was appointed, directing it to investigate the charges so far as they are in conformity with the resolution of the 5th of February, has been fairly obeyed by the unanimous decision of the committee not to investigate any alleged offenses prior to the election of the accused as a member of the House.

3d. That the office of this committee, in the opinion of those who dissent (Mr. Weaver and Mr. Smith), being not to try and punish criminally, but to carry on an investigation instituted by the House, for the purpose of protecting its honor, purity and integrity, and which the House is to determine by its action on the report of the

committee, we do not, therefore, feel authorized to grant the motion to strike out the charge and specification contained in it.

The minority of the committee, in arriving at the conclusion that it is "corrupt and criminal" for a member of Assembly to accept and take the office of Speaker, with an agreement and understanding that his vote or action shall be influenced thereby, or shall be given in any particular manner, or upon any particular side of any question in consideration of such office, are guided in their judgment by the words of the statute, which declares that "every member of the Assembly who shall except *any gift, thing of value, or advantage, or any promise or undertaking to make or furnish the same* under *any* agreement or *understanding* that his *vote, opinion, judgment, or action shall be influenced thereby*, or shall be given in any particular manner or *upon any particular side of any question, matter*, cause or proceeding, then pending, *or which may by law be brought before him in his official capacity*, or who shall directly or indirectly demand, require, propose to receive, receive or entertain any negotiation or proposition for any such gift, *thing of value or advantage*, as a consideration or motive for his official vote, action or influence, shall upon conviction be forever disqualified from holding any public office, trust or appointment under the Constitution or laws of this State; shall forfeit his office, and shall be punished by imprisonment in a State prison not exceeding ten years, or by a fine not exceeding five thousand dollars, or both in the discretion of the court.

It is an evasion to claim that a vote directed by considerations of personal advantage and profit to the voter, is not corrupt within the meaning of the statute, because it is cast in pursuance of "the law of the land." Every vote cast in the Legislature is cast in pursuance of the "law of the land." "The law of the land" makes it the duty of a member to vote on one side or the other of every question that arises when is present. But when a member's vote or action is turned from one side to the other, by a bribe, although he votes and acts in pursuance of "the law of the land," he nevertheless brings himself within the grasp of the penal statute, and exposes himself to the penalty of corruption.

The undersigned, entertaining these views of the ruling of the majority of the committee, felt it to be their duty to protest, and did protest against this limitation of the investigation, as, in fact, a suppression of a portion of the inquiry with which the committee had been charged by the House. And they now call the attention of the House to this restriction upon the investigation, and state it as a

reason why the result of the committee's labors does not present the full revelation of all the circumstances connected with the charges in question, which the House in ordering the investigation, and the people of the State, had a right to expect.

Under the ruling of the majority of the committee as above set forth, there still remained to be investigated the grave charge that the accused had received the sum of $1,200 upon an understanding that his official action was to be influenced thereby; a charge embracing two points of inquiry, first, the fact of the payment of the money, and second, the consideration or understanding, upon which it was paid. The first point involved a simple matter of fact; the second, a question which usually has to be determined from surrounding circumstances, rather than by direct proof of a formal corrupt agreement.

The first witness produced on the part of the people, was Mr. Hope, of Brooklyn, who proved that Mr. T. C. Callicot had been for some time indebted to Mrs. Woods, a widow lady residing in Brooklyn, in the sum of $1,200, for certain bank stock, the property of Mrs. Woods. That about the time Mr. Callicot was presented as a candidate for Speaker of the House, the witness came to Albany, and applied to Mr. Callicot for payment of this amount, informing him that he had a document in his possession, which he should make use of if the money was not paid. This document, it afterward appeared was addressed to the Hon T. C. Fields, and related to the transaction between Mr. Callicot and Mrs. Woods. Mr. Callicot offered Mr. Hope, in settlement of the claim, the sum of $200 in cash, and an order upon the clerk of the Assembly for $300, in anticipation of his pay as a member, informing him that he had no more money at his command. Mr. Hope refused the offer and insisted upon the whole amount due to Mrs. Woods. Mr. Callicot solicited delay, promising to raise the amount in a few days. Subsequently, Mr. Hope called, by Mr. Callicot's appointment at his room in Congress Hall, and was informed that he should soon receive the money. Shortly afterwards, Mr. Hamilton Harris, of this city, a member of the republican State central committee, called at Mr. Callicot's room, when the witness was requested to withdraw for a few minutes. He retired to the hall, leaving Mr. Harris and Mr. Callicot together in the room. In about five minutes Mr. Harris came out, and Mr. Hope returned to the room, when Mr. Callicot immediately paid him the sum of twelve hundred dollars, taking his receipt in full, and requesting him not to say anything about it, and not to make the transaction public.

Mr. Hamilton Harris was then examined as a witness on the part of the people, and testified that at Mr. Callicot's request, he called upon him on the 19th of January; that he had then no personal acquaintance with Mr. Callicot; that upon learning from Mr. Callicot the character of Mrs. Woods' demand, he advised its settlement; and Mr. Callicot told him that he thought he could borrow the money; that he called upon Mr. Callicot the following day, and was informed by him that he could not obtain the money; and that thereupon, he, Mr. Harris, without, as he alleges, knowing anything about the pecuniary condition of Mr. Callicot, and without any request from him, offered to loan him the twelve hundred dollars, as an act of "encouragement," and did, on the 21st of January, loan, as he alleges, the twelve hundred dollars to Mr. Callicot, taking his note, payable to his own order, on demand, without any other security.

One of the important questions before the committee, in the opinion of the undersigned, was, whether this transaction was a *bona fide* loan, and so regarded and understood by the parties interested, or whether the money was paid by Mr. Harris and received by Mr. Callicot to influence the official conduct of the latter.

It appeared in evidence, that Mr. Harris is, and was, at the time of the transaction before mentioned, a member of the republican union State central committee, and of the executive committee; that Senator Henry R. Low, is, and was, at the same time, chairman of that committee; and that Isaac Sherman, of New York city, is, and was, its treasurer, and there was produced before the committee, by Mr. Sherman, a draft in the words and figures following:

$1,200. ALBANY, *January* 15, 1863.

To ISAAC SHERMAN, Esq., *Treasurer*, Hanover Square, N. Y.

Pay to the order of Hamilton Harris, Esq., twelve hundred dollars.

H. R. LOW, *Chairman.*

BEN. FIELD, *Secretary.*

Indorsed HAM. HARRIS, THURLOW WEED.

Pay to the order of the Merchants' Bank, New York.

R. H. KING,
President.

Received payment,
MERCHANTS' BANK.

And written across the face, "Paid January 22, 1863."

The prosecution offered to prove that the money received upon this draft was the money paid to Mr. Callicot by Mr. Harris, to whose order the draft was drawn, and that the money was not a *bona fide* loan from Mr. Harris to Mr. Callicot, but was paid out of the funds of the republican State central committee, through its officers, to Mr. Callicot as part of a consideration or bribe, to influence his official action and votes, as a member and Speaker of this Assembly.

This evidence was objected to by the counsel for the accused, and the majority of the committee sustained the objections, and the undersigned, minority, dissented from the decision. After the payment of this money to Mr. Callicot by Mr. Harris had been proved, and after the draft for the same amount, drawn by Hon. H. R. Low, to the order of Mr. Harris, had been produced in evidence, this minority felt that they could not fully discharge their duty and carry out what they believed to be the desire of this House, without thoroughly investigating every circumstance connected with the transaction. A bribe is never paid or received openly, and without some attempt at concealment; for its payment and acceptance render both parties amenable to the criminal law. The money paid to corrupt a public officer is usually given in the form of a loan or present.

The evidence allowed to be taken has established these leading facts: That Mr. Callicot, while a member of this House, received from Mr. Hamilton Harris, a member of the republican State central committee, an organization theretofore politically opposed to Mr. Callicot, the sum of twelve hundred dollars. That when Mr. Harris advanced this money to Mr. Callicot, he had no previous personal acquaintance with him, had no knowledge of his pecuniary circumstances, and received from him no security for the repayment of the alleged loan. That a draft for the same amount, $1,200 was drawn by the Hon. H. R. Low, chairman of the republican State central committee, made payable to the order of Hamilton Harris, negotiated in this city, and paid in New York on the twenty-second of January, by Mr. Isaac Sherman, the treasurer of the republican State central committee, out of the funds of the said committee.

The draft drawn by the Hon. H. R. Low bears date the 15th day of January, 1863. On the following morning the sixteenth of January, Mr. Callicot was nominated by the republican party as Speaker, and for the first time separated himself from the political party with whom he had formerly associated, and by his votes and action gave the republican party control of the organization.

In view of all the facts developed by the investigation, the identity

of the persons engaged in the transaction, and their subsequent concert of action; the harmony of the dates; the agreement of the amount drawn by Mr. Low to the order of Mr. Harris, with the amount paid by Mr. Harris to Mr. Callicot, and all the surrounding circumstances, the undersigned have arrived at the conclusion that the charge that Theophilus C. Callicot, in the month of January, 1863, and after he had qualified and taken his seat as a member of this House, received the sum of $1,200 in money, as a consideration and motive for his official action and votes as a member and Speaker of this Assembly.

It belongs to another tribunal to administer the criminal law, but it is within the province of this House to protect its own purity and honor, and to drive corruption beyond its walls. The undersigned, guided by the facts of this case, and the law applicable to them, would be false to their convictions of duty did they fail in conclusion to recommend the adoption of the following resolutions:

1. *Resolved*, That the fact is established that money was improperly used in effecting an organization of this House.

2. *Resolved*, That this improper and corrupt use of money in connection with legislation is condemned by this House.

3. *Resolved*, That Theophilus C. Callicot, a member of this House from the fifth Assembly district of the county of Kings, has been guilty of official corruption and misconduct, rendering him unworthy of a seat in this House, and that he be, and hereby is expelled therefrom.

All of which is respectfully submitted.

ABRAM B. WEAVER.
SAXTON SMITH.

April 17, 1863.

Assembly documents, 1863, Vol. 6, No. 205.
Assembly Journal, 1863, page 1081.

April 20, 1863, seven o'clock.

The House again met, pursuant to subdivision four of rule two.

The Speaker designated Mr. De Pew to occupy the chair.

Mr. Speaker announced the special order, being the report of the select committee appointed to investigate the charges of corruption against Theophilus C. Callicot, Speaker of the Assembly, and also the report of the minority of the committee thereon.

Debate was had thereon, when

Mr. Reddington moved that the subject be made a special order

for to-morrow morning, immediately after the third reading of bills.

Mr. Speaker put the question whether the House would agree to said motion, and it was determined in the negative, two-thirds of all the members present not voting in favor thereof.

REPORT OF MAJORITY ADOPTED.

Mr. Speaker then announced the question to be on agreeing to the report of the majority of the select committee, in the words following, to wit:

REPORT OF THE MAJORITY OF THE SELECT COMMITTEE APPOINTED TO INVESTIGATE THE CHARGES MADE AGAINST T. C. CALLICOT, MEMBER OF ASSEMBLY FROM THE FIFTH DISTRICT OF KINGS COUNTY.

The select committee appointed to investigate the charges against T. C. Callicot, member of Assembly from the fifth district of Kings county, respectfully reports to the House the evidence taken and the proceedings had before the committee.

The evidence taken, in the opinion of the committee, establishes the following facts:

That Mr. Callicot first became a candidate for Speaker of this House and was voted for as such on the 16th day of January, 1863; that on Saturday, the 17th of the same month, the Assembly took a recess without having elected a Speaker, and that during that recess, and on Monday, the 19th of said month, Mr. Thomas Hope, of Brooklyn, the son-in-law and agent of Mrs. Mary A. Wood, also of Brooklyn, called upon Mr. Callicot, at his room in Congress Hall, in Albany, for the purpose of obtaining payment of a debt of twelve hundred dollars which Mr. Callicot then owed Mrs. Woods. That Mr. Hope threatened to use a certain document against him, which he had in his pocket, addressed to Hon. T. C. Fields, the character or nature of which he did not state to him, unless he settled the claim that day, and Mr. Callicot finally promised to telegraph to him at New York next day in relation to the matter; that Mr. Callicot then sought the legal advice of Reynolds, Cochrane & Harris, a law firm of the city of Albany, and Mr. Hamilton Harris, one of the members of the firm, called upon Mr. Callicot on the afternoon of the same day, the 19th of January, at his room in Congress Hall. That Mr. Callicot then stated to him his circumstances, in relation to the claim of Mrs. Woods, and the threat that had been made, and Mr. Harris advised him that he had better pay the demand, Mr. Callicot saying that he thought he could borrow the money of his landlord or other friends; that on

the following day Mr. Harris again called on Mr. Callicot, and upon learning that Mr. Callicot had not been able to borrow the money, offered to loan him twelve hundred dollars to pay the demand, and Mr. Callicot accepted the offer, and telegraphed to Mr. Hope to come up; that Mr. Hope came up immediately, and remained all night at Congress Hall, and on the following morning, the morning of the 21st, Mr. Harris again called upon Callicot, and loaned him twelve hundred dollars, in pursuance of the offer made on the previous day, and took his note on demand for that amount, and that Mr. Callicot immediately thereafter paid Mr. Hope the claim of Mrs. Wood. That there was nothing said at either of the interviews between Mr. Harris and Mr. Callicot, by either of them, in relation to the official influence, action or votes of Mr. Callicot, as member of Assembly or Speaker, or in any manner whatever; that neither before nor after nor at the time of any interview or interviews, between Mr. Callicot and Mr. Harris, was there any argument, arrangement or understanding, express or implied, that the money was paid to Mr. Callicot as a consideration or motive for his official action, influence or votes as Speaker, member of Assembly, or any other manner; or that he should become the candidate or nominee of any party or parties, he having been nominated and voted for, for Speaker, several days previous to Mr. Hope's coming to Albany to obtain the claim of twelve hundred dollars, which Mr. Callicot borrowed the money to pay.

Ira Shafer, Esq., of Albany, appeared before the committee as counsel, and conducted the prosecution, and Hon. Lyman Tremain and Hon. C. B. Cochrane, appeared before the committee as the counsel of Mr. Callicot, and conducted the defense. Previous to the taking of any testimony, Mr. Tremain, as counsel for the defense, objected to any investigation of matters alleged to have transpired prior to the election of Mr. Callicot as a member of the present Assembly, and moved for a decision of the committee upon the validity of the objection. After hearing the arguments of counsel upon the question, the committee were of the opinion that the resolution appointing them limited their powers to the investigation of the official acts of Mr. Callicot as a member of this Legislature; and that the investigation should extend as far back as the date of his election, and so decided. During the course of the investigation, the counsel for Mr. Callicot also objected to charge 8th, and to the 5th, 6th, 7th and 8th specifications of charge 6th, and moved that all evidence relating to them be excluded, on the grounds stated in the written motion herewith transmitted to the House. The committee,

after hearing the arguments of the respective counsel upon the motion, were of the opinion that charge 8th, being simply "bribery and corruption, as a member of this Assembly," was not in any sense "specific," and consequently not within the resolution appointing them, and that specifications, 5th, 6th, 7th and 8th, of charge 6th, did not contain or express any charge against Mr. Callicot, of "corrupt or criminal conduct in his official character." The committee were of the opinion that it is not corrupt or criminal for a member of Assembly to accept and take a nomination for the office of Speaker of this House, with an agreement and understanding that his vote, influence and action should be given upon the question of the election of United States Senator in accordance with the law of the land and his sworn duty as a member of the Legislature, or that his vote, influence and action should be given upon any other question, in accordance with his duty, and it is not alleged in either of the specifications mentioned, that there was any understanding or agreement by which they were to be given otherwise; nor are there any allegations that they ever *were* given otherwise. The person or persons with whom the agreement was made were not stated in the so called specifications, nor was it alleged for *whom* or for *what* it was agreed that his vote should be given, except that in the 6th specification there was an allegation that his vote and action were to be influenced upon the *question* of the election of a United States Senator and in the 7th specification, upon *all questions* relating to the election of the elective officers of the Assembly, so that, in the opinion of the committee, if they had heard evidence under these pretended specifications, they would have departed from the instructions given them, which required the charges to be *specific*, and would have been groping in the dark in search of corrupt and criminal conduct not charged. For these reasons, the committee decided to hear no evidence under those specifications. It will appear by the proceedings had before the committee, herewith laid before the House, that various offers were made by the counsel for the prosecution to prove the acts and declarations of various third persons, without in any manner connecting Mr. Callicot therewith. The committee deemed it their duty, in the consideration of questions relating to the admissibility of testimony, to regard Mr. Callicot as on trial for the commission of a crime, and to be governed by the rules of evidence applicable to all judicial proceedings; they knew of no other guide by which to receive or exclude evidence, and they believe they have decided the questions of evidence raised in accordance with well settled elementary principles of law. It must be evident to

every one that the declarations and acts of others should not be given in evidence against a person, unless he was present, or in some way assented to them, or authorized them, for were it otherwise, there might be no end to the testimony, and the innocent might be quite as likely to be convicted as the guilty. It would be a hard rule, indeed, that would allow a person to perform acts and make declarations to be used in evidence against a defendant who had no *control* over the person making the declarations or performing the acts; who had no knowledge of them, and who had in no manner authorized or assented to them. It will be seen that no evidence was given, or offered to be given, showing that Mr. Callicot had authorized, assented to, had any knowledge of, or was in any way or manner connected with the acts or declarations of other parties ruled out by the committee; and the committee were unable to satisfy themselves that any reason existed in this case for disregarding plain and well settled rules of evidence. The committee have heard all proper evidence offered to show that Mr. Callicot has been guilty of corrupt or criminal conduct in his official character as a member of this Legislature, or since his election, and have come to the conclusion that he is entirely innocent.

E. H. PRINDLE.
HENRY C. LAKE.
P. E. HAVENS.

Mr. Fields raised the point of order, that both reports being before the House, the question should first be taken upon the resolutions appended to the minority report.

The Chair decided the point of order not well taken.

Mr. Fields appealed from the decision of the chair.

The Chair decided that the main question having been ordered by the House, the appeal could not be entertained.

Mr. Speaker then put the question whether the House would agree to said report, and it was determined in the affirmative.

Assembly Journal, 1863, pages 1136 to 1140, inclusive.

In the Matter of the Breach of Privilege of Hon. Platt Potter.

ORDERING THE ISSUING OF ATTACHMENT FOR THE ARREST OF HENRY RAY, A MEMBER, AS A WITNESS.

ASSEMBLY CHAMBER, *January* 31, 1870.

Mr. Kernan offered, for the consideration of the House, a resolution in the words following, to wit:

Resolved, That the committee on grievances be instructed to examine into the matter of the arrest of H. Ray, of Ontario, and report to this House all the facts bearing on the case, and such action as may be necessary in the premises.

Mr. M. C. Murphy moved to amend by adding thereto the words, "without expense to the State."

Mr. Speaker put the question whether the House would agree to said motion, and it was determined in the negative.

Mr. Speaker then put the question whether the House would agree to said resolution, and it was determined in the affirmative.

Assembly Journal, 1870, page 102.

ASSEMBLY CHAMBER, *February* 10, 1870.

Mr. Fields rose to a question of privilege, and submitted the evidence and report of the committee on grievances, in the matter of the arrest of Hon. Henry Ray, a member of this House from the county of Ontario.

During the reading of the report, Mr. Bergen moved to dispense with the further reading, and that the same be laid on the table and printed.

Mr. Alvord rose to a question of order, and stated that it was the privilege of any member of the House to call for and have the full report read.

Mr. Speaker decided the point of order well taken, and the reading of the report was resumed, as follows:

REPORT OF THE COMMITTEE ON GRIEVANCES IN THE MATTER OF THE ARREST OF HON. HENRY RAY.

On the 21st day of January, 1870, the House, on motion of Mr. Kiernan, of New York, passed the following resolution:

Resolved, That the committee on grievances be instructed to examine into the matter of the arrest of Henry Ray, of Ontario,

and report to this House the facts bearing on the case, and such action as may be necessary in the premises.

By order.

C. W. ARMSTRONG,
Clerk.

The committee on grievances, in execution of such order of the House, reports that, in pursuance of the above resolution, they caused proper subpœnas to be served upon the Hon. Platt Potter, a justice of the Supreme Court of this State in the fourth judicial district, W. B. French, district attorney of the county of Saratoga, Elisha D. Benedict, a deputy sheriff of said county, the officer who served the process of attachment on Mr. Ray; that they also took the testimony of Mr. Cornelius A. Waldron, surrogate of Saratoga county, Rodney L. Adams, and the statement of the Hon. Henry Ray; that by the testimony of Mr. Justice Potter it was made to appear before your committee that a subpœna was issued, under the authority of the court, directed to the Hon. Henry Ray, a member of the Assembly from Ontario county; that said subpœna was served on said Ray at the city of Albany; that he pleaded, in excuse for not obeying said subpœna, his privilege as a member of the Assembly of the State of New York; that thereupon return of such excuse was made by the officer serving the subpœna, to the district attorney of Saratoga county; that upon such return to such subpœna, said district attorney applied to the court, presided over by Mr. Justice Potter, for an attachment against Hon. Henry Ray, for disobeying such subpœna; that thereupon, on motion of the district attorney, an attachment was issued against the person of the said Ray, and the officer was directed to serve such attachment and produce the body of Mr. Ray before the court, then being held at Ballston Spa, in the county of Saratoga; that it appeared before your committee that the testimony of Mr. Ray was desired on an alleged case of false pretenses, then depending before the grand jury of said county; that in obedience to said attachment Mr. Benedict, deputy sheriff of the county of Saratoga, proceeded to the city of Albany, and between the hours of seven and eight o'clock, on the morning of January 21st, 1870, arrested Mr. Ray at his lodgings, and, by force of arms, took him to Ballston Spa, where said court was then being held; that at the said time of said arrest Mr. Ray pleaded his privilege of exemption from arrest as a member of the Assembly of the State of New York; that he was informed by said officer that, if he refused to obey such attachment,

he would be forcibly taken, if it required the whole police force of the city of Albany; that, thus coerced, Mr. Ray, under protest, proceeded with the officer to Ballston Spa, where said court was being held; that on their arrival at the court-house he demanded to be presented to the judge, that then and there he might plead his privilege as a member of the House, and his exemption from arrest under such process; this was refused him by the said French, who caused him to be immediately taken before the grand jury, and to give such testimony as was within his knowledge.

His Honor, Judge Potter, before the committee, in the first place attempted to extenuate or excuse his conduct by a statement that the attachment was issued inadvertently, and that his attention was not called to the fact that Mr. Ray was a member of the Assembly, although it subsequently appeared, by the statements of Judge Potter of the district attorney, and of Mr. Waldron, the surrogate of Saratoga county, that prior to the issuing of the attachment, the fact that Mr. Ray, was a member of the Assembly, was brought to the knowledge of the judge. It will thus appear that the subpœna was issued to Mr. Ray, and the attachment issued upon return of the service of said subpœna notwithstanding such knowledge.

The arrest of Mr. Ray, and his forcible conveyance to Ballston Spa, in the county of Saratoga, took place under the direction of the judge presiding at Oyer and Terminer, on motion of the district attorney, the prosecuting officer of the county, with full knowledge of the fact that Mr. Ray was a member of the Assembly.

The question therefore arises, and the only question which your committee is called upon to consider, is whether or not Mr. Ray was exempt from arrest under the process issued in this case.

The privilege of legislative bodies is as old as the common law, from which we have gathered our liberties and by which the rights of the people have been and are to be protected. It is older than Magna Charta, older than the writ of habeas corpus, older than the courts either of law or of equity, and from the parliament of a nation and Legislatures of the States have come those laws and rules of practice which are calculated to secure to the citizen all the benefits and privileges conferred by the government under which he may live. Your committee, in the examination of the question, have found that, in this country, the violations of parliamentary privilege, either of members of Congress or of members of State Legislatures, have been rare. In the earlier history of the British Parliament, when the House of Commons for long years struggled against

the prerogative of the crown, against the overbearing aristocracy of the lords, and against the assumption of power on the part of the courts, which were for centuries the mere servants and tools of the crown, we find many instances where the Commons, secured and maintained the privileges of members of that body.

In the case of Shirley v. Fagg, as far back at 1675, Mr. Fagg, a member of the House of Commons, was summoned on an appeal, issuing from the Court of Chancery, to appear before the bar of the House of Lords and plead to an appeal. The House of Commons held this to be an unquestioned violation of its privilege, and passed on the 18th of May, 1675, the following resolution:

"*Resolved*, That it is the undoubted right of this House that none of their members be summoned to attend the House of Lords during the session or privileges of the Parliament." (3 *Grey*, 170.)

On the twentieth of May, 1675, Sir Thomas Leigh, from a committee appointed by the House of Commons, gave the following, among other reasons, why a member of the Commons was not compelled to appear before the bar of the House of Lords, and this, it will be borne in mind, was when the House of Lords was sitting as a Court of Appeals of the British realm: "The privilege of a member is the privilege of the House and is a restraint to the proceeding of inferior courts, but not to the House itself;" thus implying that the House whose privilege has been violated is the only body possessing the right to pass upon the question whether such privilege has or has not been violated. (2 *Grey*, 399.) It is laid down as a principle in parliamentary law, in England, that the privilege of Parliament extends to all cases except three: treason, felony and breach of the peace. (4 *Inst.*, 25; *of Lex, Parl.*, 381.)

Sir William Blackstone lays down the following as the privileges of Parliament: "1st. They are at all times exempted from question elsewhere for anything said in their own House during the time of privilege. 2d. Neither a member himself, his wife or his servants, for any matter of their own, may be arrested on mesne process, in any civil suit. 3d. Nor be detained under execution, though levied before the time of privilege. 4th. Nor impleaded, cited or *subpœnaed* in any court. 5. Nor summoned as a witness or juror. 6th. Nor may their lands or goods be distrained. 7th. Nor their persons assaulted or characters traduced." (1 *Blackstone*, 163–4.)

Mr. Thomas Jefferson in his note upon this quotation of Blackstone says, "The constitution of the United States has only privi-

leged senators and representatives themselves from the single act of arrest in all cases except treason, felony and breach of the peace, during their attendance at the session of their respective Houses, and in going to and returning from the same and from being questioned in any other place for any speech or debate, in either House."

"Under the general authority to make all laws necessary and proper for carrying into execution the powers given them, they may provide by law the details of which may be necessary for giving full effect to the enjoyment of this privilege." He goes on and says further:

"The act of arrest is void, *ab initio* (2 *Strabo*, 989). The member arrested may be discharged on motion. The arrest being unlawful, is a trespass for which the officer and others concerned are liable to action or indictment in the ordinary courts of justice, as in other cases of unauthorized arrest. The courts before which the process is returnable, is bound to act as in other cases of unauthorized proceeding, and liable also, as in other similar cases, to have its proceedings stayed or corrected." He says further: "This privilege from arrest privileges of course against all process, the disobedience to which is punishable by an attachment of the person (*the very case in point*), as a subpœna *ad respondendum or testificandum* or a summons on a jury; and with reason, because a member has superior duties to perform in another place." He goes on to say: "When a representative is withdrawn from his seat by summons, the people whom he represents, lose their voice in debate and vote, as they do in his voluntary absence. When a senator is withdrawn by summons, his State loses half its voice in debate and vote, as it does in his voluntary absence. The enormous disparity of evil admits of no comparison."

In December, 1795, the House of Representatives of the United States, committed two persons of the names of Randall and Whitney, for attempting to corrupt the integrity of certain members, which they considered as a contempt and breach of the privilege of the House; and the facts being proved, Whitney was detained in confinement a fortnight and Randall three weeks, and was reprimanded by the Speaker. The editor of the *Aurora*, of Philadelphia, William Duane, was, for defamatory articles, declared to be guilty of breach of the privilege of the Senate.

In the debate in the Duane case, Mr. Senator Pinckney, who opposed the proceedings, after citing the privileges of Congress, says that each House has power to enforce complete order and decorum within their

own chamber; to clear the galleries if an audience is unruly, and to punish their own members; to take care that no arrests except for treason, felony or breach of the peace, shall keep their members from their duty. There can be no doubt but that the Legislature of the State of New York has as extensive if not more extensive privileges than the Congress of the United States. It is the successor of the colonial Legislature which derived its privileges from the parliamentary law of England, and is not restricted in its privileges by the Constitution of the State. Mr. Pinckney, in the speech quoted above, seemed to intimate the privileges of State Legislatures were more in their discretion than those of Congress.

The Constitution of this State of 1777, declares that the Assembly should enjoy the same privileges and do business in like manner as the Assembly of the colony of New York of right formerly did.

It is admitted that the parliament of England, and the courts of law, have cognizance of contempt, and are authorized to punish for such contempts. It is also admitted that the State Legislature have equal authority, because their powers are plenary; they represent their constituents completely, and possess all their powers, except such as their Constitutions have expressly denied them; that Congress has no natural or necessary power, nor any powers but such as are given to it by the Constitution. Therefore, the Constitution expressly and directly exempts members of Congress from personal arrest, and, therefore, with Congress no further law is necessary, the Constitution itself being the law; still under the provision of the Constitution, which confers upon Congress the right to make all laws necessary and proper for carrying into execution the powers vested by the Constitution in them, it would be within their power to establish any regulation of law in regard to the breach of their privilege, which they might desire. It is laid down by parliamentary writers that, "even in cases of treason, felony and breach of the peace, to which privilege does not extend, as to substance, yet in parliament a member is privileged as to the mode of proceeding. The case is first to be laid before the House, that it may judge of the fact and of the grounds of accusation, and how far forth the manner of the trial may concern their privilege. Otherwise it would be in the power of other branches of the government, and even of every private person, under the pretense of a charge of treason, felony and breach of the peace, to take any man from his service in the House, and so as many, one after another, as would make the House what he desired it should be.

The rule in this country has not been carried to this extent but

the ruling is well established that, where any body desires the appearance of a member of the Legislature, or of Congress, as a witness or in any other manner, first the permission of the House of which he is a member is asked, and then the question is before the House whether they will or will not grant permission to the member to attend before any court or other House of Parliament. The Senate of the State of New York has no right to summon within its presence, or before any committee of that body, any member of the Assembly, without first, in due and courteous form asking permission of the Assembly that such member may be summoned. If then the Senate of the State has no such power, can it, in reason be contended that a court, an inferior body, and, to a great extent, under the direction and control of the Legislature, shall have the power to subpœna, at its will, a member of either House of the Legislature and take him from his duties as a representative of the people? Your committee are of the opinion that no such doctrine can be maintained upon any well settled and grounded principles of parliamentary law, as applicable either to the Parliament of England, or to any legislative bodies in this country, and your committee can readily see the great danger to which such assumption of power on the part of the courts would inevitably lead.

Your committee have examined with great care the instances of breaches of privilege of the Congress of the United States, the first parliamentary body in this country, and they find but few instances where the privileges of either House of Congress have been violated. On the twenty-second of June, 1822, it seems that an assistant door-keeper of the Senate of the United States had been subpœnaed to appear before a committee of the House of Representatives, when Mr. Senator Holmes from the State of Maine offered a resolution that said assistant door-keeper be permitted to attend as such witness. During the debate on the resolution Mr. Foote, a Senator from Connecticut, used the following language: "That as the officers of the Senate were not subject to be taken from their duties by the process of any court, so neither could a door-keeper, by any process from the other House, be taken from his duties." It was conceded that the door-keeper was only required to attend before the committee during the recess of the Senate, and therefore the discussion ceased. This statement by Senator Foote seems to show the fact to be, that up to that time, there was no question but what members of Congress and the officers thereof, were exempt from obeying any writ of subpœna, whether issued by a court or by either House of Congress.

Your committee have found two English cases in their researches, which would in the least question the principles they believe govern questions of this character. The one is the case reported in 1 *Saukeld*, 279, *Dominux Rex* v. *Dominux Preston*. There Lord Preston had been committed by the Court of Quarter Sessions for refusing to appear and testify before the grand jury in a case of high treason. He was brought before the Court of Kings' Bench on a writ of habeas corpus, when Lord Holt used the dictum that it was a great outrage, and had he been present at the committal he would have imposed a fine. It does not appear that Lord Preston was even a member of Parliament, or that Parliament was in session at the time, nor does it appear that he pleaded his privilege either as a member of Parliament or as a peer of the realm. And under the English rule as your committee understands it, had Parliament not been in session, and had the time of exemption after the session of Parliament expired, then Lord Preston, would not have been exempt from testifying before the grand jury in a case of high treason. The next is the case of Lord Ferrers, which occured in 1757. An attachment issued against Lord Ferrers out of the Court of Westminster Hall for refusing to obey a writ of habeas corpus which had been issued, requiring him to produce in the Court of Westminster Hall the body of Lady Ferrers, she alleging by prayer addressed to the chief justice, that the conduct of her husband was so harsh tyrannical and abusive, and so endangered her peace of mind and her life that she required to be present at the court to present her petition, and ask its protection. In that case it was a refusal to obey a writ of habeas corpus, where the party who was required to obey such writ, had, as appeared to the court been guilty of a breach of the peace, to wit: physical abuse to Lady Ferrers. Under these circumstances the House of Lords passed the following resolutions:

"It is hereby ordered and declared that no peer or lord of Parliament hath privilege against being compelled by process of the courts of Westminster Hall, to pay obedience to a writ of habeas corpus directed to him." The writ of habeas corpus requires not the presence of the member himself, but the production of some person alleged to be in his custody or under his control, and therefore can be complied with without the necessity of the member being absent from his duties upon the House of which he may be a member, and is very different from arrest under a process issued out of court which actually takes the body of the member, and therefore takes him from his duties in the House to which he has been elected

The people of the State of New York very early took into consideration this question of privilege; and the Legislature, as far back as the twentieth of February, 1788, passed the following statute:

"Every member of the Legislature shall be privileged from arrest on civil process during his attendance at the session of the House to which he shall belong, except on process issued in any suit brought against him for any forfeiture, misdemeanor or breach of trust in any office or place of public trust held by him." (*Laws of* 1788; 1*st. ed. of Revised Statutes, vol.* 1, *p.* 154.)

This qualification would indicate that in all other cases the member was absolutely exempt from arrest.

The gentlemen who appeared before the committee seemed to press very strongly the idea that an attachment was not a civil process. There can be no question but what the subpœna issued in this case was a civil process, and, under the authorities above cited, void *ab initio*. Therefore, your committee cannot see by what force of reasoning an attachment issued against a person for non-compliance with a summons of subpœna can be tortured into a criminal process. In other words, your committee are of the opinion that the proceedings are void from the beginning, and that no legal process can be founded upon one which was void of itself. If a member was privileged from attending on the summons of a grand jury, in the first place, his refusal was no contempt of the court out of which such process issued, for he had committed no offense. He had simply availed himself of a right which the statute of the State and parliamentary law gave him; and your committee is of opinion that it is a novel doctrine, dangerous in itself, that a person availing himself of the privilege granted to him by the laws and Constitution of the land, becomes guilty of a crime and is liable to arrest for the exercise of the privilege thus conferred upon him. The distinguished judge himself, admitted the danger to which the construction of the statute, which he seemed to desire to press upon the committee, would lead, and it needs no argument to show how dangerous it would be if such a course were allowed to be pursued. There are sixty-two counties in this State. There are sixty-two grand juries sitting, many of them during the session of the Legislature. Suppose it established that a member, is liable to arrest for disobeying a summons to appear before a grand jury. How easy would it be for designing men to thus deprive the House of members to an extent sufficient to embarrass its business; or again, for designing persons to change the political complexion of the House from one party to another, by getting up fictitious char-

ges before a grand jury, and issuing subpœnas to members, and on their non-compliance, issuing attachments, and causing their arrest and transportation to the different shire towns of the counties. Your committee deem it not necessary to follow this line of argument.

The mere statement of it is sufficient to show how dangerous such a rule would be.

Finally, your committee, in full view of the facts, and after a full consideration of the law and precedent governing cases of this kind, have come to the conclusion that the arrest of the Hon. Henry Ray, on January 21, 1870, a member of the Assembly from the first district of the county of Ontario, on an attachment issuing out of the court of Oyer and Terminer, then being held in the county of Saratoga, of which the Hon. Platt Potter was presiding justice, was a high breach of the privileges of this House, by said Potter and derives the censure of this House; and your committee are further of the opinion, that W. B. French in causing the issuing of such attachment, was guilty of a high breach of the privileges of this House, and that the said Windsor B. French, district attorney as aforesaid, deserves the censure of this House. Your committee are also of the opinion, that the arrest of Henry Ray, in the city and county of Albany, by Mr. Elisha D. Benedict, a deputy sheriff of the county of Saratoga, was a high breach of the privileges of this House, and that said officer deserves the censure of this House.

Your committee respectfully submit the following resolutions:

Resolved, That the Hon. Platt Potter, justice of the Supreme Court of the fourth judicial district, be summoned and required to appear before the bar of this House for a high breach of its privilege in issuing an attachment for the arrest of the Hon. Henry Ray, a member of the Assembly of the State of New York, from the first district of the county of Ontario; that the House will then take such action as the House in its judgment may see fit.

Resolved, That Windsor B. French, district attorney of the county of Saratoga, be summoned and required to appear before the bar of this House, the House then to take such action as shall seem meet to this House for the high breach of its privilege by said French, in issuing or causing the issuing of the attachment on which the Hon. Henry Ray was arrested and forcibly conducted to Ballston Spa, Saratoga county in this State.

Resolved, That Mr. Elisha D. Benedict, the officer executing such writ of attachment, and who arrested the Hon. Mr. Ray under the

same, be summoned and required to appear before the bar of this House for a high breach of its privilege, to receive such punishment as the House in its judgment shall see fit to administer.

All of which is respectfully submitted.

THOMAS C. FIELDS,
HENRY J. CULLEN, JR.,
ALEXANDER FREAR,
JOHN C. JACOBS,
THOMAS G. ALVORD,
DEWITT C. LITTLEJOHN,
JAMES W. HUSTED,
Committee on Grievances.

TESTIMONY BEFORE THE COMMITTEE ON GRIEVANCES.

ALBANY, *January 25th*, 1870.

The committee on grievances met at 3 P. M. at the Capitol.

Present—A quorum of the committee.

The chairman, Hon. Thomas C. Fields, read the following resolution of the House:

Resolved, That the committee on grievances be instructed to examine into the matter of the arrest of Henry Ray, of Ontario, and report to this House, the facts bearing on the case, and such action as may be necessary in the premises.

Hon. Platt Potter, judge of the Supreme Court, fourth judicial district, sworn.

By the chairman:

Q. You are a justice of the Supreme Court? A. I am, sir.

Q. Of which district? A. The fourth judicial district.

Q. Where do you reside? A. At Schenectady.

Q. Will you state to the committee any facts within your knowledge in relation to the arrest of Mr. Ray, of Ontario, a member of Assembly? A. I was engaged in holding the Circuit Court, Oyer and Terminer, at Saratoga last week, and on some day during the week, I should think about Tuesday, perhaps Wednesday, the district attorney, Col. French, informed me that the grand jury had a case before them, and were awaiting the testimony of a member of the Legislature who had not yet arrived. From what he stated to me, I supposed it was one of the Saratoga members. I think his name was not mentioned. He asked me whether his appearance could be inforced in any way, by attachment or otherwise. My

attention was directed immediately to the trial of a cause, and I listened as well as I might, without diverting my attention. I said to him, as near as I can remember, that members of Assembly were privileged from arrest in all civil proceedings, but were not privileged, as I understood it, in criminal proceedings; that, whether an attachment upon an adjudication that he had been guilty of contempt in not obeying a subpœna was a criminal matter within the spirit of the law, I was not quite certain. My impression was that he was liable to arrest on an attachment for disobedience of a subpœna. Expecting, when the application should be made, that I should have an opportunity to examine the law, the statute not being before me at that time, I gave him that opinion, merely speaking off-hand, and went on trying the cause. During that day, and perhaps the next, upon his application to have a witness called who did not appear before the grand jury, I would suspend the court a moment, the witness would be called and proclamation would be made for a motion of attachment. How many we granted I do not know; perhaps a dozen or less, and several were granted in that way, including this. I was not aware, when the motion was made in this case, that Mr. Ray was a member of the Legislature. I knew that the district attorney intended to apply for an attachment for a member of the Legislature, but I did not know at the time that this was the case to which he had referred. The attachment was granted in this case, as in all others, upon affidavit of non-attendance after subpœna and the necessity of it.

Q. Where are those papers? A. I have no knowledge of them, except as I have stated. On my return from dinner to the court house, on Friday afternoon, a man, whom I supposed to be an officer of the court, but whose name I cannot recollect, stated that a member of Assembly, who had been attached, was now present. It then recurred to my mind what I had said about the privileges of a member, without knowing that I had issued an attachment in the case. I went up to court and took my seat upon the bench, and I saw a return to an attachment lying on the desk before me. Seeing the return, the justice associate, sitting on my right, pointed out Mr. Ray as the member of Assembly. Seeing Col. French, the district attorney, then coming into the room, I said to him: "Here is an attachment returned served, as I understand, against a member of Assembly, who is now present; has the witness been before the grand jury?" He replied: "He has." "Has he testified?" "Yes." I said: "I presume, then, you desire no further action upon this attachment?" I am giving the sense; I cannot remember the exact

language. He said: "Certainly not; all we desire has been obtained." I said: "Then he ought to be discharged, and he is discharged." It is due to Col. French to say that my opinion was given to him as I have stated. I heard nothing of the question that had been raised in the Assembly, until this subpœna was served upon me in this case, last Saturday evening, by the sergeant-at-arms. Yesterday I went to my office and looking to see whether I had, under the circumstances, been guilty of any violation of the law, I examined some legal authorities upon the subject and made up my mind, that a member of Assembly was liable to arrest in such a proceeding. I may be mistaken about that, but such is my best judicial judgment. I have given you now the whole history of my knowledge of the transaction.

Q. Where is the return to the service of the subpœna, the first service? A. I do not know where it is now; neither do I know where the papers of attachment are; I presume they should be with the clerk; I have not seen them since.

Q. Do you know the name of the surrogate of Saratoga county? A. Yes, sir, his name is Waldron.

Q. Was he present at the time this attachment was issued? A. Not that I recollect; but the mention of his name recalls the fact, that he made an inquiry of me during my sitting there as to whether I thought a member of the Assembly was liable to arrest upon an attachment.

Q. Did he not make that inquiry on behalf of the officer who was to execute the process; A. I did not understand it so; whether it was so I am unable to say; I supposed he asked me from a desire to know; I think he had a book in his hand, and read from it substantially, that members of Assembly were privileged from arrest in civil cases, but liable in criminal cases, and I concurred in that general idea.

Q. Do I understand you to say that you construed this to be a criminal proceeding against Mr. Ray? A. I cannot say that I construed it to be a criminal proceeding, but I did not regard it as a civil proceeding; it was a process for contempt for disobedience to a subpœna to appear and testify before the grand jury in a criminal matter; I ought to say, that Colonel French said it the testimony of this witness was not obtained, justice would probably be defrauded, or a man liable to justice would escape; perhaps he said as much as that to me; I do not pretend to give all his language.

Q. I understand you to say that you did not consider this a civil proceeding? A. I did not consider it within the language of the

statute, which privileges members of Assembly from arrest on civil proceedings.

Q. Did you not know that the privilege of a member of the Assembly, or a member of a parliamentary body was extended to all classes of cases except felony, treason, and a breach of the peace? A. Not by the statute of this State, as I understand it.

By Mr. Alvord:

Q. I understand from the statement that you have made here, that at the time of the issuing of this attachment you had not brought to your mind at all, nor had any point been made that this man was a member of the Assembly? A. I do not think I looked at the name when the attachment was handed to me in form to be indorsed; I put my hand to it in a hurry.

Q. I understand you to give now a legal opinion in reference to the power of the statute to protect a member of Assembly? A. Yes, sir.

Q. You are of course aware of the fact, that Mr. Fields stated that the provision privileging members of Assembly, is a part of the organic law of the United States; do you not believe that it would be just as much an injury to the interests of the public as represented by the members of the Legislature, to compel a man to go away from that body, upon the simple idea that he was a witness in a criminal case, as it would be upon the idea that he should be taken away under a civil process against him personally? A. I can conceive of great public injury by taking away a member of Assembly from his proper duties as a law maker.

Q. Do you not think, therefore, that although technically you may, as a lawyer, be right, yet that the spirit of that privilege would be illy carried out short of giving a member of Assembly a privilege against arrest for anything, except actual commission of crime on his part, and a criminal arrest growing out of it? A. I have not had an opportunity to examine fully in relation to that question, but in the hope to inform myself in the few moments I had yesterday I did refer to the statute; I should have acted with hesitation if I had known the attachment was for a member of Assembly when I signed it, but since I have looked at the law I am inclined to think that had I been informed at that time I should have deemed it my duty as a judge still to have issued the attachment. In that I may be mistaken. It is a question of law which lawyers might differ about.

Q. Do you consider the first process summoning this gentleman to appear in your court and testify before the grand jury, a civil or crimi-

nal proceeding? A. The subpœna itself is perhaps a civil process; disobedience to that subpœna is adjudged a contempt.

Q. In the first instance the subpœna is a civil process; it is a command on the part of the court that the person appear on a certain day to give certain evidence; a member of Assembly is not liable to arrest under that process; how can you, then, by any reason under heaven claim, because he fails to attend upon that civil process, that he then becomes a criminal? A. You may be right in your argument; I have thought that a proceeding for contempt is not a civil process, by the maxim of the law.

"The expression of one thing excludes all others." I am now speaking of the argument in my mind if I were called upon to give an opinion; I am not defending myself; I hope the law will be fully sustained and declared, whatever it may be, so that hereafter I may act according to that declaration; but without an expression of the Legislature in addition to what is now contained in the statutes, I should be compelled, upon my oath of office, and in the performance of my duties, to do the same thing, over again, under like circumstances.

By Mr. Husted:

Q. The result would be, then, that if the House were in process of organization, and there were sixty-five members of one political party and sixty-three of another political party, by arresting upon such a process three of the majority the minority would be able to organize the House and appoint the committees? A. The person who should be instrumental in such an action ought, I think, to be held criminally liable, but we may suppose another case; here is a great criminal and nobody knows the crime but a member of the Legislature; the witness may refuse to appear, and the crime go unpunished.

By the chairman:

Q. Do you not know as a historical fact that the same phraseology has existed so far as the privileges of members of Parliament are concerned, for 400 or 500 years, and that the House of Commons even refused to allow their members to be subpœnaed before the House of Lords; I snppose we are bound to take the same construction of the privileges of the House as the parliamentary law gives to Parliament. A. There is no doubt of that, sir; we hold it to be law that where an American statute is construed in the same terms as the English statute, that the English construction of that statute should be our construction of it here; but in reference to this subject the English law has been changed

by a variation of the phraseology in various States of the union; some of them are like the United States statutes.

Judge Potter submitted to the committee the following legal authorities of which he had taken notes: (8 Cushing's Reports, 338 to 43; 1 Sawtell, 278; Dominus Rex v. Dominus Preston; 4 Dallas U. S. Decisions, 341; 1 Revised Statutes, 154; or in the 5th ed., 458.)

Windsor B. French, sworn.

By the chairman:

Q. Where do you reside? A. At Saratoga Springs.

Q. You are the district attorney of Saratoga county? A. I am.

Q. Will you state the facts in relation to the subpœna, and the attachment for the non-obeyance of that subpœna by Mr. Ray? A. I was in attendance upon the grand jury during the session of the last week. There was a complaint against a party and it became necessary to have the testimony of Mr. Henry Ray in order to sustain an indictment against him. The grand jury instructed me, *pro forma*, to send for such witnesses as were required. I learned that Mr. Ray was a member of the Assembly, and the question arose in my mind at once whether he were privileged or not, and in order that I might be better prepared to act upon it, I went and counseled with the judge, in substance as he has related to this committee, and was answered in substance as he has stated. I issued my subpœna without any direction from the judge, and sent it down by an officer. The officer returned and informed me that Mr. Ray would not or could not come; making oath to the service of the subpœna, I waited a sufficient length of time, as I supposed; as long as I possibly could, before the final adjournment of the grand jury, and then asked the judge his opinion in regard to the propriety of issuing an attachment, and was answered substantially as he has testified. I made a hasty examination of the case, and having the assurance of the judge, I made up my mind that a member of Assembly was not exempt from arrest on a criminal process, and I issued an attachment; asked the judge to indorse it, and the clerk to seal it, and gave it to the officer. Subsequently Mr. Ray appeared, testified before the grand jury, and was discharged.

Q. Do I understand you that you consider the issuing of an attachment a criminal process? A. I do, assuredly.

Q. Why? A. Because it is not a civil process.

Q. What gives it its criminal character? A. It is a criminal proceeding.

Q. The district attorney is in a criminal proceeding; that does not make him a criminal? A. I may be wrong in my view.

Q. Where are the papers in this case? A. I have the original subpœna; I have not the attachment; I do not know where it is; I made search for, but did not find it.

Q. On the return of the officer who served this subpœna, did you file a formal return, stating the facts that the subpœna had been served, and that Mr. Ray declined on the ground of being a member of the Legislature? A. It simply contained the fact of the service of the subpœna.

Q. Was the motion for the attachment based upon the return of the officer, or upon affidavit sworn to? A. The return of the officer is sworn to.

Q. Where is that return? A. I have it with me.

By Mr. Husted:

Q. Do you consider a subpœna criminal process? A. Of course I do; it cannot be a civil process, in my judgment; you cannot get a civil process out of a criminal proceeding.

By Mr. Alvord:

Q. Is not the difference between a civil process and a criminal process, as far as regards strongly marked feature of difference, that in the one case you can take a party, and in the other it is simply a summons to appear? A. No, sir; I do not consider that the difference.

By the chairman:

Q. Is not a criminal process a process issuing out of the court for the arrest of a party against whom some criminal charge has been made? A. Undoubtedly that is a criminal process, but there are other processes that are criminal also.

By Mr. Husted:

Q. Is there any difference between a subpœna in a civil action to be tried at the circuit, and a subpœna in a criminal action to be tried at Oyer and Terminer? A. One issues out of a criminal court, and the other out of a civil court.

By Mr. Alvord:

Q. Do you hold that if I am subpœnaed to attend and give testimony in a civil action, and I fail to attend, being a member of the Legislature, that you have a right to a criminal proceeding against me? A. I do not know; but when a witness fails to appear, and an attachment is asked for, and he is brought before the court and an interrogatory is presented according to the common form, and he then

refuses to testify, I think then he becomes a criminal, and is criminally liable.

Q. I ask you if there is any distinction in your mind between a motion for contempt in a civil case, where a party fails to appear and testify, and in a criminal court? A. Yes, sir, I should hesitate to send an attachment for a member of Assembly on a failure to attend in obedience to a subpœna issued out of a civil case.

Judge Potter recalled.

By Mr. Littlejohn:

Q. Can a person be guilty of contempt in disobeying an order of the court when the law expressly provides that he shall not obey that order? A. I do not know that there is any such provision of law.

By Mr. Husted:

Q. Do you consider a subpœna in a criminal action a criminal process? A. I am not disposed to say that it is, before the contempt; I judge that the criminality begins when a man has been adjudged guilty of contempt.

By the Chairman:

Q. Suppose the law providing for imprisonment for debt was in existence, and Mr. Ray owed you a hundred dollars, could you go to the court, sue out a process, and procure the arrest of Mr. Ray while he was in attendance on a session of the Legislature? A. I suppose not; that, I think, would be clearly a civil proceeding.

By Mr. Littlejohn:

Q. But you could subpœna him in another man's case as a witness, and if he falls back upon his privilege as a member of the Legislature, then he is brought before the court and becomes a criminal?

Mr. French recalled.

By the Chairman:

Q. Do you consider that this is a criminal process for the reason that a charge of crime is being investigated before the grand jury, or because the person upon whom the subpœna was served refuses to obey that subpœna. A. For the latter reason.

Q. When it makes no difference whether the investigation be on a civil or criminal question?

By Mr. Littlejohn:

Q. Did you know when the subpœna was issued for Mr. Ray, that he was a member of Assembly? A. I understood that he was; I did not know it; I believed that he was.

Q. When you procured the attachment, you then believed he was a member of Assembly? A. I did, sir.

Q. With that knowledge you directed the officer to discharge his duty? A. Yes, sir.

Elisha D. Benedict, sworn.

By the Chairman:

Q. Where do reside? A. In Waterford, Saratoga county.

Q. Are you the officer who served the attachment on Mr. Ray? A. I am.

Q. Will you state what took place prior to receiving the attachment; at the time of receiving it; and what took place as to the arrest of Mr. Ray; and his appearance before the court? A. I knew there was an attachment to be issued to come down here, and I understood it was for one of the members of the Senate; I had heard there were some privileges, though I did not know what, and I asked Mr. Waldron, our surrogate, what I should do; he told me to wait and he would look into the law; he went and looked at the law, but did not give me any final answer, and said he would speak to the judge; he spoke to the judge and afterward told me that the judge said to go on and do my duty, and my papers protected me.

Q. Where are those papers? A. I returned them to Judge Potter and have not seen them since; I delivered them to him Friday afternoon about two o'clock; he was sitting on the judge's bench in the court-house.

Q. Have you made any examination for the papers since? A. I have; at Ballston last night; I looked in the court-house, in the judge's drawers, through the county clerk's drawers, through the county clerk's office, and also through some papers that had been knocked off on the floor.

Q. Did you ask the county clerk if they had been filed in his office? A. I did and he said they had not.

Q. Did you ask the judge or district attorney for them? A. I did not.

Q. Where did you arrest Mr. Ray? A. I arrested him in Hamilton street, I think, at his boarding-house.

Q. At what time was it? A. I should say it was about quarter to eight o'clock in the morning.

Q. Did he object to going? A. He did in a laughing kind of way; he said he would have to object to going; he said he would have to fall back on his privileges as a member of the House.

Q. Did Mr. Ray refuse to go, and did you not say to him that unless he did go with you, you would take him, if it was necessary to employ the whole police force of Albany county? A. Yes, sir;

I understood it to be a joke; I did not think I would have to do that.

Q. Are you a constable? A. I am a deputy sheriff of Saratoga county.

Q. You arrested Mr. Ray in Albany county? A. Yes, sir.

Q. You were not specially deputised by the sheriff of Albany county to serve a process? A. No, sir; as I understand it; I have a right to serve an attachment or bench warrant anywhere in the State.

By Mr. Littlejohn:

Q. Did you know this gentleman to be a member of Assembly when you arrested him? A. No, sir; I supposed he was a Senator.

Q. You believed him to be a member of the Legislature? A. Yes, sir.

Cornelius A. Waldron, sworn.

By the chairman:

Q. Where do you reside? A. At Waterford.

Q. Did the last witness consult with you in regard to the service of an attachment on Mr. Ray? A. Yes, sir; Mr. Benedict, who is deputy sheriff of our county, came to me and said he had an attachment against a member of the Legislature, issued by the district attorney, which he exhibited to me, and he wanted to know if he had a right to go and arrest him; I told him I would go and examine the law; I looked at the law and was unsatisfied in my own mind whether the attachment was civil or criminal process; and I told him I would submit the matter to the judge; I went and occupied the witness chair next to the judge, and when the judge came in after dinner, I told him I came on behalf of the officer of the court, and wished some advice; I told him I understood an attachment had been issued for a member of the Legislature, and the officer wanted to know whether he had a right to execute it or not; I raised the question with him whether it was a civil or criminal process; the court was about ready to proceed, and the remark the judge made to me was that the process protected the officer; he said, "the process will protect the officer, and he should do his duty;" I went and told the officer that the judge said that "the process would protect him, and that he must do his duty."

Rodney L. Adams, sworn.

By the Chairman:

Q. State what you saw and heard at the time Mr. Ray was taken from his lodgings under this attachment to Saratoga Springs? A. I went into Mr. Ray's room at about twenty-five minutes to eight in

the morning, and found him, as he said, under arrest; he had previously spoken to me in regard to being subpœnaed; I remarked that, if I were he, I would not go with the officer, having in my mind a general idea as to the privileges of members; the officer then said that he should take him, and should call in whatever force was necessary to accomplish it.

By Mr. Littlejohn:

Q. Was that said in jest or seriously? A. I understood it to be seriously; there was no jest about it.

Q. Did you hear Mr. Ray state to the officer that he was a member of the Assembly? A. Yes; that matter was talked about by all three of us; he said he was ordered to make the arrest and he should do so.

Mr. Ray made the following statement to the committee:

I was first subpœnaed to appear at Ballston Spa, at nine o'clock on Wednesday; I told the person who served the subpœna that I had a matter before the House which I wished to attend to, and that I could not consent to go, as I considered that I was privileged from such a process by reason of being a member of Assembly; he left and urged me to come on in the four o'clock train, saying that I could get back in the morning in time for the session; I knew I could not do this, and told him I did not think I should come; at eleven o'clock he came back, saying he had missed the train and wanted me to go with him; I refused to go, and pleaded my privilege as a member of the Legislature; on Friday, at about half-past seven in the morning, before I had got out of my bed, I was arrested; I objected to going with the officer, and he told me that he must take me, and that if necessary he should call in force to help him, if it required the whole police of Albany, or words to that effect; I therefore went with the officer.

Q. Did you refuse to testify before the grand jury? A. I asked to go before the judge before being called on to testify; they told me that the judge was busy; I asked both the officer and the district attorney for the privilege of going before the judge to plead my privilege, previous to appearing before the grand jury; that permission was not granted, and I went before the grand jury, and was afterward discharged by the judge; I was under arrest from about half-past seven in the morning to about half-past three or four o'clock in the afternoon.

The committee adjourned to meet at the call of the chair.

Assembly Documents, 1870, Nos. 67 and 70.
Assembly Journal, 1870, page, 235.

ASSEMBLY CHAMBER, *February* 11, 1870.

The consideration of the report of the committee on grievances, in the matter of the arrest of the Hon. Henry Ray, member of this House from the county of Ontario, being the special order of the day, immediately after the reading of the journal,

Mr. Speaker announced the question to be upon the adoption of the report and resolutions of said committee, in the words following:

The committee find, by the testimony of Mr. Justice Potter, that a subpœna was issued, under the authority of the court, directed to the Hon. Henry Ray, a member of the Assembly from Ontario county; that said subpœna was served on said Ray at the city of Albany; that he pleaded, in excuse for not obeying said subpœna, his privilege as a member of the Assembly of the State of New York; that thereupon return of such excuse was made by the officer serving the subpœna, to the district attorney of Saratoga county; that, upon such return to such subpœna, said district attorney applied to the court, presided over by Mr. Justice Potter, for an attachment against Hon. Henry Ray, for disobeying such subpœna; that thereupon, on motion of the district attorney, an attachment was issued against the person of the said Ray, and the officer was directed to serve such attachment, and produce the body of Mr. Ray before the court then being held at Ballson Spa, in the county of Saratoga; that the testimony of Mr. Ray was desired on an alleged case of false pretenses then depending before the grand jury of said county; that, in obedience to said attachment, Mr. Benedict, deputy sheriff of the county of Saratoga, proceeded to the city of Albany, and, between the hours of seven and eight o'clock on the morning of January 21st, 1870, arrested Mr. Ray at his lodgings, and, by force of arms, took him to Ballston Spa, where said court was then being held; that at the time of said arrest Mr. Ray pleaded his privilege of exemption from arrest as a member of the Assembly of the State of New York; that he was informed by said officer that if he refused to obey such attachment he would be forcibly taken, if it required the whole police force of the city of Albany; that, thus coerced, Mr. Ray, under protest, proceeded with the officer to Ballston Spa, where said court was being held; that on their arrival at the court-house he demanded to be presented to the judge, that then and there he might plead his privilege as a member of the House, and his exemption from arrest under such process; this was refused him by the said French, who caused him to be immediately taken before the grand jury, and to give such testimony as was within his knowledge.

His Honor, Judge Potter, before the committee, in the first place

attempted to extenuate or excuse his conduct by a statement that the attachment was issued inadvertently, and that his attention was not called to the fact that Mr. Ray was a member of the Assembly, although it subsequently appeared, by the statements of Judge Potter, of the district attorney and of Mr. Waldron, the surrogate of Saratoga county, that, prior to the issuing of the attachment, the fact that Mr. Ray was a member of the Assembly, was brought to the knowledge of the judge. It will thus appear that the subpœna was issued to Mr. Ray, and the attachment issued upon return of the service of said subpœna, notwithstanding such knowledge.

The committee conclude their report as follows:

Resolved, That the Hon. Platt Potter, justice of the Supreme Court of the fourth judicial district, be summoned and required to appear before the bar of this House for a high breach of its privileges in issuing an attachment for the arrest of the Hon. Henry Ray, a member of the Assembly of the State of New York, from the first district of the county of Ontario; that the House then will take such action as the House in its judgment may see fit.

Resolved, That Windsor B. French, district attorney of the county of Saratoga be summoned and required to appear before the bar of this House, the House then to take such action as shall seem meet to this House for the high breach of its privileges by said French, in issuing or causing the issuing of the attachment on which the Hon. Henry Ray was arrested and forcibly conducted to Ballston Spa, Saratoga county, in this State.

Resolved, That Mr. Elisha D. Benedict, the officer executing such writ of attachment, and who arrested the Hon. Henry Ray under the same, be summoned and required to appear before the bar of this House for a high breach of its privileges, to receive such punishment as the House in its judgment shall see fit to administer.

All of which is respectfully submitted

THOMAS C. FIELDS,
HENRY J. CULLEN, JR.,
ALEXANDER FREAR,
JOHN C. JACOBS,
THOMAS G. ALVORD,
DEWITT C. LITTLEJOHN,
JAMES W. HUSTED,
Committee on Grievances.

Mr. Speaker put the question whether the House would agree to said report and it was determined in the affirmative.

On motion of Mr. Fields,

Resolved, That Hon. Platt Potter residing in the city of Schenectady, in the State of New York, be and he is hereby ordered to attend at the bar of this House on the sixteenth day of February inst., at 12 M., at which time he will have opportunity to make explanation of his conduct in issuing the attachment for the arrest of Hon. Henry Ray, a member of this House; and this Assembly will then proceed to take further order on the subject; and a copy of this and the foregoing resolution, under the authentication of the clerk of the Assembly of the State of New York, and attested as a true copy by Jeriah G. Rhoads, sergeant-at-arms for the said Assembly, and left by the said sergeant with the said Hon. Platt Potter, or at his residence in the city of Schenectady, on or before the fourteenth day of February inst., shall be deemed sufficient notice for the said Potter to attend in obedience to this resolution.

Resolved, That W. B. French, residing in Saratoga Springs, in the State of New York, be and he is hereby ordered to attend at the bar of this House on the sixteenth day of February inst., at 12 M., at which time he will have opportunity to make explanation of his conduct in causing the issue of an attachment for the arrest of the Hon. Henry Ray, a member of this House; and this Assembly will then proceed to take further order on the subject and a copy of this and the foregoing resolution, under the authentication of the clerk of the Assembly of the State of New York, and attested as a true copy by Jeriah G. Rhoads, sergeant-at-arms for the said Assembly, and left by the said sergeant with the said W. B. French, or at his residence in the village of Saratoga Springs, on or before the fourteenth day of February inst., shall be deemed sufficient notice to the said French to attend in obedience to this resolution.

Resolved, That Elisha D. Benedict of Waterford, be and he is hereby ordered to attend at the bar of this House on the sixteenth day of February, inst., at 12 M., at which time he will have opportunity to make explanation of his conduct in arresting on an attachment Hon. Henry Ray, a member of this House; and this Assembly will then proceed to take further order on the subject; and a copy of this and the foregoing resolution, under the authentication of the clerk of the Assembly of the State of New York, and attested as a true copy by Jeriah G. Rhoads, sergeant-at-arms for the said Assembly, and left by the said sergeant with the said Benedict, or at his residence in

Waterford, on or before the fourteenth day of February inst., shall be deemed sufficient notice to the said Benedict, to attend in obedience to this resolution.

Assembly Journal, 1870, pages 252 to 254, inclusive.

HON. PLATT POTTER, WM. B. FRENCH AND ELISHA D. BENEDICT, AT THE BAR OF THE HOUSE.

ASSEMBLY CHAMBER, *February* 16, 1870.

The sergeant-at-arms announced the presence of Messrs. Potter, French and Benedict.

PLATT POTTER ARRAIGNED AT THE BAR OF THE HOUSE.

Mr. Potter then appeared before the bar of the House, and Mr. Speaker addressed him as follows:

"Mr. Platt Potter, you have been summoned to the bar of the Assembly of the State of New York for a high breach of its privileges, in issuing the attachment under which the Hon. Henry Ray, a member of this House from the first district of Ontario county, was arrested, and taken from his duties as a member of this House, and conducted to Ballston Spa, in the county of Saratoga, there to testify before a grand jury of the court of Oyer and Terminer, of which court you were the presiding justice. What have you to say in excuse for your conduct in the premises?"

Mr. Potter requested that he be heard by his counsel, who was then present.

Mr. Fields objected, on the ground that he was here simply to make excuse for his action in causing the arrest of Hon. Henry Ray, and not on trial, having been previously heard before a committee of this House having the subject in charge.

The House refused to grant the request of Mr. Potter.

ANSWER OF PLATT POTTER.

Mr. Potter then submitted to the House his excuse for his proceeding in the premises, as follows:

MR. SPEAKER.—I appear in obedience to the resolution and order of this honorable body, to give such explanations as I am permitted, in relation to what is assumed to be a high breach of privilege in causing the arrest of an honorable member of this House.

In thus appearing, sir, I do not acknowledge the power of this House, I do not acknowledge the authority of this House to call me

to any account whatever; and coming here by courtesy and out of respect to this House, I proceed to make such statements as I am permitted to make by this honorable House, without waiving the objection, which, by counsel, I am advised I might make, and decline to appear here at all by any authority that this House may have over me.

And while I stand here, thus giving all respect to this high department of the State government, I also stand here to protest against the legal right and legal authority of this body, to call in question my judicial acts, performed within the sphere of the judicial department of this same government, in which I have the honor to hold a place.

I claim, sir, that the judicial department of this government is intrusted with an equal portion of the sovereign power of the State, that it is possessed of equal dignity; a department whose powers are co-ordinate and co-extensive with, and entirely independent of the legislative power. That to be sovereign and independent, when acting within its proper sphere, there must exist no other, or higher tribunal to call them to account for their independent action. I protest, and claim, sir, that there is no way known to the Constitution or laws by which a judge can be called to account, be tried, degraded, or the dignity of his judicial office impaired, except by the only method known to the Constitution, by way of impeachment for corruption in office. Of this there is no pretense here.

I am not called here, sir, as an individual, to answer for an individual offense. No, sir; this case assumes vastly greater proportions and magnitude than that. Sir, I come as a justice of the Supreme Court of New York, as one representing the judicial department of the State, to defend my judicial action. In speaking in their defense, common propriety demands that I should speak with all respect to this honorable body. Duty to my department equally demands that I as their representative should speak with boldness of defense as if that whole body were here speaking to an equal. Sir, with all respect, I deny the power; I deny the legal, the constitutional power of this House to call my judicial acts in question.

I protest in the name and as the representative of the judicial department to exercise or to the attempted exercise of such a power by this House. I protest in the name of the sovereign people of this State; I protest in behalf of the constitutional independence of the judicial department against the power of this House to punish by censure or otherwise the individual for acts performed while exercising the functions of a magistrate of the highest court of original jurisdiction of this State.

Sir, I should be a traitor to the interests, to the dignity, to the sacred character of the judicial department, to its independence, to the right to protection, if by any act of mine or by passive submission I should consent to the aggressive assumption of power which proposes to strike so deadly a blow to their independence; nay, if I did not with boldness, with fearlessness of consequences to myself, protest, solemnly, earnestly protest, against a proceeding so calculated in its effect to overawe them in the exercise of their duties, and thus to destroy their independence.

Sir, if this measure shall be carried out upon the assumed powers of this House, what is left of character or of independence to the judicial department? If one department of this government profess the power to command obedience of another co-extensive and equal power; if the legislative can usurp the authority, to hold in awe or punish the judicial, then indeed have we a despotism, and not a government of freedom. If for an efficient, judicial act of a judge, this House profess the power to punish, even for mistaken judgment, where is the boasted protection to an independent judiciary? Where will there be found a spirit craven enough to accept a place on the judicial bench?

Sir, allow me to say, that in my opinion, it will be a sad day for this republic, a sad day for the liberties of this people, when such a doctrine shall be established.

With what offense, then, am I charged? Not with having acted corruptly; but, that as a judge, acting officially, acting in the discharge of a high and solemn duty imposed by the Constitution and laws of this State, which I have sworn to support and obey, I had the independence, nay, if you please, the daring, to pronounce the law as I understood it then, and as I understand it now; yea, more, I feel bound to say here, before this high tribunal, now, in full view of all the terrors of its power, which it may deem in its pleasure to exert, that as I *still* understand the law of privilege in this State, were I called upon to-morrow to act again as I acted in this case, as I feel responsible to God only for its conscientious performance, I should feel bound to repeat the act for which I am now called upon to explain.

My offense then, is, that in so pronouncing the law, I have differed in opinion with the honorable committee; perhaps, with the whole House. But, sir, I have committed no contempt. No contempt has been committed. As a judicial officer in so acting, I could commit no contempt for which I could be held responsible. It is not the individual who is before you, whose acts you propose to punish by censure

or otherwise, that has committed any act whatever. It is a high court of this State that performed the act; and the theory of this proceeding is, that the individual, who at the time was clothed by the Constitution and laws with the power to execute the sovereign will; he who was the mere minister of justice, acting according to his solemn sworn convictions, executing not his own, but the people's will, that is to be humiliated, for daring to do his constitutional duty.

Sir, a case like this is unheard of. It is an anomaly in this; it is an anomaly in any and every civilized government upon the earth. It is an anomaly in every step of its progress. First, the judge was subpœnaed to appear before an honorable committee of this House, to give evidence of the fact upon which one of its honorable members had been arrested. To this step no possible objection could be urged. He appeared in obedience to that summons. Knowing his legal protection, little did he imagine that he was called there to be made informer against himself for an offense, to be used as his own accuser.

A becoming respect to, and confidence in the body before whom he appeared, forbid such an idea. He was not summoned there for trial. Had he been, he would have put himself there, as he does here, upon his defense. He relied upon a reciprocal confidence, upon comity, upon the magnanimity of an honorable committee that no such object was in view as a trial. The legitimate duty of that committee, as he supposed, was, to inquire as to facts, and by what law an honorable member had been arrested; whether there had been a breach of privilege; whether the law was sufficiently protective, and if not, to recommend one that should be. He knew that he had acted in the conscientious convictions of duty, and that he was not amenable; that if he had acted corruptly then only could he be dealt with. He supposed too, that if any doubt existed as to his rightful exercise of power, that some committee, like that of the judiciary, would be selected, and who would place their legal opinion, for which they would be held responsible before the legal world, upon the records of the Legislative department, that before such a committee (not now intending disrespect to this) an opportunity would be given to discuss so grave a question.

But, sir, without a trial, I am charged by that honorable committee, that as a judge of the Supreme Court, I have committed a high breach of privilege of this House; that as such judge I have struck a blow at the independence of this co-ordinate branch of the government; and the theory of your honorable committee, that this House possess the power to punish by censure or otherwise, without a trial,

not the body who committed the act, but the minister of that department, who executed its power. This is an assumption of the pre-eminence of power of this House, authority over the judicial department, which has no foundation in this government. It is an assumption that the legislative power, or that one branch of its body is superior in authority to the judicial department. This is an assumption that no lawyer dare assert, and one that this House will not stultify its understanding by asserting. If this proposition is untrue, how can they exercise the power of punishment? How then is it proposed to heal this wound to their dignity of privilege? They cannot punish the court. How then can they punish its ministers? It is proposed to heal this wound by the *lex talionis*, the law of retaliation, of inflicting a like injury upon a co-ordinate department, to commit a breach of privilege upon the judicial department. Sir, I stand here protesting against the right to commit such a breach. I stand here claiming the privilege of the judicial department. I assert that you have no right to bring these two departments into conflict; that you would thereby endanger the stability, the perpetuity, the independence of the government, whose trusts you have taken in charge.

Believe not, sir, that I say these things through any fear of consequences personal to myself; that as you cannot punish the court with material or physical punishment; that you cannot punish its members without a trial; that you cannot try its judges but by impeachment; that you cannot impeach but for corruption, and that in the constitutional form. True, you can resolve; you can send forth your resolve in the language of degradation, but it will not degrade; that is, it will not degrade him against whom it is issued. It is not such degradation that I fear; if issued, it will fall harmless upon him against whom it is issued. Nay, sir, were I ambitious, I might invite it. I might court its favor. But, sir, I have no such ambition; no ambition, but in the sight of that God, in whom I trust, to do my judicial duty fearlessly to the best of my ability, unawed, unterrified, uninfluenced by caprice or favor, and the will of assumed rulers, or the more fearful influence of popular applause or popular excitement and prejudice.

But, before I proceed further upon this view of the case, I propose candidly, for a moment, to look at the law of privilege to members of the Legislature of this State, and with all intended respect to the argument of your honorable committee, I deny, I solemnly deny, that the law of privilege of the British Parliament, as claimed by them, is the law of privilege of the State of New York, and I shall show it to

be otherwise. I deny that the privilege of the House of Congress is the law of privilege of the State of New York; and, while I accord to that committee credit for much research into the law of privilege of Great Britain, I shall show that they did not search far enough; and I find the report entirely deficient in the examination of the law of privilege of this State. The law of privilege of members of Congress is not the same law as that of the British Parliament, but is secured to them in the Constitution of the United States, which limits and restricts the common law of England, as cited in that report. The laws of the several States differ from each other and differ from that of Congress. The law of privilege of the State of New York is peculiar to itself. It is not, as is that of Congress, in the Constitution, but is regulated by a statute. It is so brief in its provisions that I shall be excused for repeating it. It is all embraced in two lines, to wit: "Every member of the Legislature shall be privileged from arrest on civil process." No lawyer of any standing or credit will deny the rule of construction to be given to this language by a maxim as old as the common law, which, applied to this case is, "the expression of one privilege is the exclusion of every other." Members of the Legislature of this State, by this rule, are *only* privileged from arrest on *civil process.*

Would any honorable member of this House, would any free citizen of this government, like to have the Legislature possess the uncontrollable power of the British Parliament, as cited by your committee? Blackstone says that Parliament possesses sovereign and uncontrollable authority. The whole sovereign power of the kingdom is vested in it — legislative and judicial. The English writers say, "that with Parliament the sovereign power is despotic; it runs without limit and rises above all control." It is the law of privilege of such a government that seems to have charmed your honorable committee. It is the privilege of the law of Great Britain, which your honorable committee claims to be in force in this State. Sir, with all due respect to that honorable committee, I deny it, and shall show it otherwise. It is the law of privilege of the State of New York only which this House can assert.

I shall be able to demonstrate that, by that law, no breach of privilege has been committed. It is only from civil process that there is privilege.

The honorable member has not been arrested on civil process. It is impossible in the nature of things that he should have been. The process in question was issued out of the Court of Oyer and Terminer.

That court is a criminal court only. It has no jurisdiction in civil cases. It cannot issue civil processes. That court possesses the power like other courts, to compel obedience to its process. All the forms of law were complied with. Disobedience to its process was proved by proper form of evidence. The court, composed of three persons, not of one individual, solemnly adjudged that there had been a contempt of its authority. It issued its process to arrest for this contempt. This is the high breach of privilege complained of.

Was this civil process? Without intending disrespect to any member of body, I assert it to be little less than an absurdity so to claim. The judiciary of this State, I apprehend, would be startled at this novel assertion, that this was civil process. The elementary books of authority which influence courts in their opinions say otherwise. They define "attachment" to be a process in the nature of a criminal proceeding, issuing out of a Court of Record against a person who has committed some contempt of court, enumerating among other things "the disregarding of its process," or "omitting to do anything that shows his disregard of the authority of the court." (Burrill's Dictionary, title "Attachment;" 4 Black. Com., 284; 4 Stephens' Com., 19; People v. Nevins, 1 Hill, 154; Bailey, J., in King v. Clement, 4 Barn. and Ald., 231; Jac. Law Dict., "Attachment.")

So, too, in like authority, is found the definition of criminal proceedings, as follows: "Civil proceedings are distinguished from criminal in this—the former are for a civil injury, or for a right due from one citizen to another; the latter is for a breach or violation of some public duty in which the State or community, in its aggregate capacity, are interested." In this State criminal proceedings are cases in behalf of the public. In the highest court of this State, in the case of Spaulding v. The People, 7 Hill, 303, the character of this process upon which the honorable member was arrested, was expressly passed upon by the court. Chief Justice Nelson, delivering the opinion, and which case was afterwards affirmed by the Supreme Court of the United States, says: "It was said, among other things, that *criminal contempt*, was where one unlawfully interfered with the process or proceedings in an action, or by the refusal of a witness to attend or to be sworn," etc. "All these," says the learned judge, "are strictly cases of criminal contempts, which have nothing to do with the collection of debts *or the enforcement of civil remedies.*" Enough perhaps upon this head of *civil process.* Except to concur in the opinion of the Court of Errors of this State, and this learned committee must excuse me, when I am compelled to say, that as a

judge, I shall act upon that opinion in preference to theirs at page nine of their report, in which they hold the contrary rule.

They must further excuse me from differing with them in the opinion, that a member of the Legislature is privileged from the service of a summons or subpœna to give evidence before a grand jury, or that the service of such subpœna or summons is void. In the recent case of Wooley and others against Benjamin F. Butler, decided in the State of Maryland, the defendant was a member of Congress; in passing through that State he was served with process, commencing a civil action against him. He applied to the court to set it aside on the ground of privilege. The court held the service of process, which did not arrest the defendant, to be good, and not void. Either that court was in error or this honorable committee must be; and, if between such conflicting opinions, a judge should happen to be mistaken in his selection of authority, is he to be punished for contempt?

Sir, your honorable committee, by their report, in which they have regarded me as such an offender, but with which they did not favor me with a copy (but for the favor of which I am indebted to the honorable representative of my own county), have stated supposed cases of almost infinite mischief, if the privileges of members is not made as absolute as they claim. I am not here to discuss such a question. I, too, can suppose cases of monstrous public injustice, if their claimed law of privilege was the law of the land. If a case of murder or felony is committed in the presence or within the knowledge of a member of the Legislature; and if, without his testimony before a grand jury, or a court, the felon shall escape public justice, should there be no power in this government to compel his attendance to testify? Is the dignity of a member of the Legislature paramount to the public security? Do not felons and outlaws now sufficiently abound in community? Shall new devices be presented beyond the present intricacies of law, by which their escape from punishment shall be secured? But, sir, my duty was to inquire what is the law; not what is policy.

It is my duty to say, however, in regard to the particular case before us, in justice to the case of the honorable member whose arrest is complained of here, I neither knew his name, the name of the accused, nor the crime with which he was charged. All I now know about it is, upon the statement of the public prosecutor, that upon the testimony alone of that honorable member before the grand jury, the accused was indicted and is now held for trial. That the accused had been perpetrating enormous frauds upon that community, claiming

that he was acting as the agent of that honorable member. It appears to me that it should have been the pleasure of that honorable member to do cheerfully what he did of compulsion, to give the lie to the foul charge, and bring the culprit, who was assailing his fame, to justice. It is justice to him for me to say, that I do not believe that his refusal to appear and testify was any indisposition to have crime punished; but based solely on a mistaken opinion of his privilege as a member.

I do not further propose to discuss the question of policy presented in the report of your honorable body; nor would it become a judge to discuss with that committee the policy of a law. Judges, when acting as such, must decide what the law is; not what it should be, nor what policy dictates. If the law is wrong, it is the province of the Legislature, not of the judge, to alter it. If the law is obscure, or doubtful, it is equally the duty of the Legislature to declare it and make it plain. If its obscurity or uncertainty is such as to make the judiciary doubt, still they must act upon their best and most conscientious convictions; and, if they mistake in this; if, in the view taken by this honorable House, which is but another, and only an equal department of the government, that an error has been committed, is the latter clothed with power to punish for a mistake of judgment? Even if the decision of the judge happens to be upon the question of privilege, must he not still decide upon that question also when it comes before him? No civilized government on earth, and, above all, no free government, ever placed their judiciary in circumstances so hazardous, so despotic as this theory proposes, subject not only to accusation, but subject to have their accusers the judges, who shall try them for the offense of a mistaken opinion, "and those judges, too, a body easily moved to anger by any thing that looks like an indignity offered to their own order."

Mr. Speaker, I crave the privilege of a single word upon the accusation made in the report by your honorable committee. It is not of material facts omitted, in their report, which would give a more favorable view of the facts of the case that I complain, although I might complain of them, but for the great injustice (unintentional no doubt) of the statement in one short paragraph of the report, not of the evidence, but of the conclusions of the committee, as follows, they say:

"His Honor, Judge Potter, before the committee, in the first place attempted to extenuate or excuse his conduct by a statement that the attachment was issued inadvertently, and that his attention was not

called to the fact that Mr. Ray was a member of the Assembly, although it subsequently appeared, by the statements of Judge Potter, of the district attorney, and of Mr. Waldron, the surrogate of Saratoga county, that prior to the issuing of the attachment, the fact that Mr. Ray was a member of the Assembly was brought to the knowledge of the judge. It will thus appear that the subpœna was issued to Mr. Ray, and the attachment issued upon return of the service of said subpœna, notwithstanding such knowledge."

This statement, in its effects, is not only calculated to create prejudice against me before this House, by whom it is claimed I am to be tried, but to degrade me in public estimation. I did not attempt to extenuate or excuse my conduct; but, on the contrary, justified the act then, as I do now; nor was the act done by inadvertence. That honorable committee will now do me the justice to remember, that though I did state the fact, that at the time I signed the attachment I did not know that Mr. Ray, against whom it was moved, was a member of Assembly; that I signed many on that day, and this among the number. It was not stated at the time, in my hearing, that Mr. Ray was a member of the Legislature. This I state as facts; but I did declare to that committee, that I had previously given the public prosecutor, and also to the surrogate whom he sent, the opinion, that a member was not privileged; but I also declared to that committee, that had I known at the time that Mr. Ray was a member, I should have deemed it wrong, but have issued the attachment all the same. I declared it then; I declare it now to this House and the world. Such was, indeed, my opinion. I stated the fact that I did not know of his being a representative at the time the process was issued. I stated this *as a fact*, because it was true; and because the honorable chairman called upon me first to state the facts. But, sir, I deny that I claimed to be excused, or attempted to extenuate my conduct, for that reason, further than the fact itself should have that effect. Sir, the conclusion that I attempted to excuse or extenuate, is inconsistent with avowals before that committee; or that I previously advised the public prosecutor of my opinion of the law, on being asked, is inconsistent with my avowal that had I known the fact of membership at the time, with my opinions of duty, I should have issued it all the same. The Hon. Mr. Littlejohn will remember that he replied to me that, with my opinion of the law, he did not see how I could do otherwise. In this, sir, that honorable committee, unintentionally, no doubt, has done me great injustice. I thrust back such a charge as against all my convictions. I stand here to defend myself upon

the broad ground of duty conscientiously performed, admitting that I had given the opinion stated, but still repeating the fact, that when I signed the process, I did not know the name of Henry Ray was that of a member.

Mr. Speaker, the fear of being tedious compels me to omit the discussion of many points vital to the subject now pending before the honorable body, more vital perhaps than a mere superficial view would suggest. A conflict between two equal departments of the same government, possessing co-extensive powers, each being sovereign within its own sphere, is fraught with dangers too serious for contemplation, too serious to be disposed of under an excitement of the moment by the complaining party, who are to sit also in judgment upon their own supposed grievances. For one department by their action to attempt to reduce another to a state of servile obedience or to destroy their independence, to bring the judiciary into a state of servile dependence upon the legislative will, would leave the former at the mercy of the latter, and the institution of an independent judiciary would perish by its own imbecility or want of power.

Permit me to say, Mr. Speaker, in all kindness of feeling, it is my deliberate conviction that your honorable committee, unintentionally, and without the reflection that their resolutions were to involve the consideration of such a fearful precedent, would now prefer either to withdraw them for further consideration or refer them to the judiciary committee, or to the attorney-general of the State, for a legal responsible opinion upon the great questions of the conflict of power which I have discussed, and which that committee have not at all considered.

Thus far, Mr. Speaker, I have argued this solemn question upon my individual views. Perhaps the argument would carry more profound respect should I cite to its support the opinions of some of the sages of the law, who, with prophetic vision, did consider this very case.

I have thus far intended to utter no word of disrespect to this honorable body, and I shall hope to receive from them in return that respect to my department which the theory of our government has established as its right. In this defense I intend to utter no language of my own equal in its severity to that of the profoundest expounders of the rights of the judiciary under our constitutional system.

Mr. Justice Story, that distinguished jurist and expounder of the Constitution, whom all so much respect, said: "Every government must, in its essence, be unsafe and unfit for a free people where such a department as the judiciary does not exist with powers co-extensive

with those of the *legislative* department. Where there is no *judicial* department to interpret, pronounce and execute the law, to decide controversies, and to enforce rights, the government must either perish by its own imbecility or the other departments of government must usurp powers for the purpose of commanding obedience to the destruction of liberty. The will of those who govern will become under such circumstances, absolute and despotic, and it is wholly immaterial whether power is vested in a single tyrant or in an assem bly of tyrants." He cites the remarks of Montesquieu with approbation, "that it is found in human experience that there is no liberty if the judiciary power be not separated from the legislative and executive," and he adds that "it is no less true that personal security and private property rest entirely upon the wisdom, the stability and the integrity of the courts of justice." "That government can be truly said to be despotic and intolerable, and will be rendered more oppressive and more mischievous, when the actual administration of justice is dependent upon caprice or favor upon the will of rulers, or the influence of popularity. When power becomes right it is of little consequence whether decisions rest upon corruption or weakness, upon the accident of chance, or upon deliberate wrong."

In every well organized government, therefore, with reference to the security both of public rights and private rights, it is indispensable that there should be a judicial department to ascertain and decide rights, *to punish crimes*, to administer justice, and to protect the innocent from injury and usurpation. But, perhaps, this honorable body would better like an opinion still nearer home. That distinguished jurist, whose name every citizen of New York repeats with veneration, Chancellor Kent, said: "In monarchical governments the independence of the judiciary is essential to guard the rights of the subject from injustice of the crown; but in republics, it is equally salutary in protecting the Constitution and laws from the encroachments and the tyranny of faction. Laws, however wholesome or necessary, are frequently the object of temporary aversion, and sometimes of popular resistance. It is requisite that courts of justice should be able at all times to present a determined countenance against all licentious acts, and to deal impartially and truly according to law, between suitors of every description, or whether the cause, the question, or the party be popular or unpopular. To give the courage and the firmness to do it, the judges ought to be confident of the security of their station. Nor is an independent judiciary less useful, *as a check upon the legislative power*, which is sometimes dis-

posed *from the force of party*, or the temptations of interest, to make a sacrifice of constitutional rights."

But Judge Story was so imbued with the fear of legislative encroachments upon the judicial, that in another place, § 1585, he says, "that there is great absurdity in subjecting the decisions of men, selected for the knowledge of the laws, acquired by long and laborious study, to the revision and control of men, who, for want of the same advantage, cannot but be deficient in that knowledge. The members of the Legislature will rarely be chosen with a view to those qualifications which fit men for the stations of judges, and on this account there will be great reason to apprehend all the ill consequences of defective information; so on account of the natural propensity of such bodies to party divisions, there will be no less reason to fear that the pestilential breaths of faction may poison the fountains of justice." "These considerations," he says, "teach us to applaud the wisdom of those States who have committed the judicial power, not to a part of the Legislature, but to distinct and independent bodies of men."

This may, perhaps, suffice upon this point. But I approach another point, which is, to ask, what is the duty of a judge, even if the question of privilege is before him for decision? This is, perhaps, one of the most important points in the case. Perhaps the opinion of Chief Justice Marshall might not be inappropriate to cite on this question. Surely no intelligent lawyer, no patriotic legislator, would hesitate to look up to such a source for advice.

In looking back upon my conduct as a judge in this matter, it is a source of sincere pride that I may call him, this profoundest of American jurists and noble patriot, to my aid. In Cohen v. Virginia, reported in 4 Wheaton, 404, that illustrious jurist said: "The judiciary cannot, as the Legislature may, avoid a measure because it approaches to the confines of the Constitution. *We cannot* pass by it because it is doubtful. With whatever doubt, with whatever difficulties a case may be attended, *we must decide it if it be brought before us.* We have no more right to decline the exercise of deciding, than we have to usurp a power that is not given. The one or the other would be treason to the Constitution. Questions may occur which we would gladly avoid, but we cannot avoid them. All we can do is to exercise our best judgment, *and conscientiously to perform our duty.*"

In another case this great judge said: "The legislative, executive and judicial powers of every well constructed government (9 Wheat., 818) are co-extensive with each other." If this is sound, where is the

power of one to call the other to account? In still another case (1 Peters, 814), Justice Johnson said: "In conflicts of power and opinion, inseparable from our very peculiar relations, cases may occur in which the maintenance of principle and the administration of justice may require different courses; and when such cases do come, our courts *must do their duty.*"

Mr. Speaker, I do not stand here to deny the power and authority of this House to punish, as for contempt, one who commits an act amounting to a breach of privilege of one of its members; but to deny that, as an individual, I have committed any such act, or intended to commit any. The act was that of the court, of which I was but one of its ministers, and that as such minister I am protected by the sanctity of the position; by the fact that it was judicial action; that my decision was one in which duty called upon me to act, and I was bound to render such a judgment in the matter as a conscientious conviction of duty demanded. It is human to err. If I have mistaken the law, it is such an error as every other judge who has ever sat upon a bench has committed; and this is the first instance in the history of American jurisprudence in which a judge has been arraigned for having mistaken the law.

But, sir, have I even made a mistake? No court has ever adjudged it to be such. I trust none ever will. Suppose that in the opinion of your honorable committee it is a mistake, yet my convictions are otherwise; and since the passage of your resolutions I have the voluntary offered opinions of distinguished jurists and lawyers, more in number than compose that honorable committee, who assure me I am right. The question, then, still remains undecided which is right, with no high judicial court to pass upon it. Suppose I am right, after all, and this honorable House shall decide that I am wrong? It will not, therefore, be wrong. My opinion here may be disregarded. I cannot vote here on the question; or if I could, for aught I know, one hundred and twenty-eight, or a majority of that number, men, perhaps my superiors in legal knowledge, can outvote me. I have said this was an anomalous proceeding. It is so. My accusers are to be my judges. Under such circumstances, I have been told, there is no hope of the act being justified. It may be so. It would be so, it is true, if only the party feeling, the spirit of wounded dignity is to control, feeling that the exercise of their power is beyond control, with no power of appeal. But, sir, if you shall believe I am conservative, it would be magnanimity, it would be the spirit of patriotism; nay, it would be elevating to divest the case of feeling and prejudice, and

to look upon the case as a high court of law, uninfluenced by personal considerations, would look upon it. Sir, this spirit of magnanimity gives me hope.

I have already said there are high governmental reasons why the precedent now to be established should be a good one. That if the law is in doubt, you have the power to remove that doubt by legislation. The courts have no power to do so, because it has not been before them. If the theory of your honorable committee is right, concientious judges, who differ from them, will repeat the error; thus they will stand, with the terror of legislative precedent suspended over them upon the one side, but with a more awful terror of Almighty vengeance, if they violate their conciences, upon the other. Can this be called, then, an independent judiciary when placed in that position?

One word more, Mr. Speaker. Your committee inform you that they have based their resolutions upon parliamentary law, and have given you its antiquity and its evidence of wisdom. They have assumed that this law of privilege is uniform. I have demonstrated by the statutes and Constitutions that it is not, and that their conclusions in this particular were in error. I have shown that the national Legislature have their privileges secured by the national Constitution; that some of the independent States have their law of privilege secured by Constitutions, and some by statutes; that the law of privilege of this State is qualified, and limited by the statute, and differs from that of the nation, of other States, and of Great Britain. If this honorable committee, as I insist have been led into unintentional error in this, if they are equally in error as to the law of privilege in Great Britain, may not the resolutions based upon such opinions be also error?

Sir, I have read the cases referred to in that report upon the English law of privilege, and what will be found as most remarkable, is that not one of those cases were determined within the last century; nor since the year 1700. If that learned committee had extended their research to that year, which was the thirteenth year of the reign of William the III, they would have found one English statute *limiting* the privileges of members of Parliament, which is entitled "An act for preventing any inconveniences that may happen by privilege of Parliament." In that act, sir, the privilege was so limited, that members of Parliament, including peers of the realm, were made liable to the service of any *civil* process which did not arrest their persons; and service of such process upon them was not void, as your honorable

committee say of the subpœna, and as has lately been held in the case cited in the State of Maryland.

If that learned committee had extended their research still further down to the year 1770, just one hundred years ago, to the thirteenth year of the reign of George III, they would have found another statute, still further abridging the privileges of members of Parliament; setting forth in its preamble, that it was to obviate the inconvenience and delay, by reason of *privilege* to the king and his subjects, in prosecuting their suits, etc. What suits had the king, but suits in his name, while in this country, are suits in behalf of the people?

In fact, sir, for the *last one hundred years*, the privilege of Parliament has not been such as your honorable committee report it to be—but has been, as it has been here, limited and restricted by statute, and confined to arrests *in civil cases*—and the English law of privilege now, is not materially different from that of the State of New York.

When this last bill to limit privilege was before Parliament, that great light of English jurisprudence, Lord Mansfield, advocated its passage, and I quote the following most significant remarks from his speech, which may be regarded as judicial construction of that law. He says: "It may not be popular to take away any of the privileges of Parliament, for I very well remember, and many of your lordships may remember that not long ago, the popular cry was for an extension of privileges, and so far did they carry it at that time, that it was said that privilege protected members from *criminal actions*, and such was the power of popular prejudice *over weak minds*, that the very decisions of some of the courts were tinctured with that doctrine. * * It was undoubtedly an abominal doctrine. The laws of this country allow no *place*, or *employment* as a sanctuary for crime, *and where I have the honor to sit as judge, neither royal favor nor popular applause shall ever protect the guilty.*" * * Noble patriot! In another part of his speech he said, "that members of both Houses should be free in their persons, *in cases of civil suits*, for there may come a time when the safety and welfare of this whole empire may depend upon their attendance in Parliament. God forbid that I should advise any measure that would in future endanger the State. But this bill has no such tendency. It expressly secures the persons of members from arrest *in all civil suits*. I am sure were the noble lords as well acquainted as I am with but half the difficulties and delays that are every day occasioned in the courts of juitice under pretense of privilege they would not, they could not oppose this

bill." The bill passed, and for one hundred years that is the law of privilege.

No case can be found like those cited by your honorable committee since the passage of that bill, even in the English courts. The cases cited are before that time, and, as that noble man declared, they contained a tincture of that abominal doctrine.

Mr. Speaker, have I not shown errors enough, in the basis, upon which your honorable committee have proposed action, to show that the law of privilege is not, in this State, what is claimed for it? There is not now even an approach to it, as laid down by your committee, in England. Why, sir, ten years before the passage of this last English statute, Lord Preston, a peer of the realm, was committed by an inferior court for refusing to give evidence before a grand jury on an indictment for high treason. He obtained a habeas corpus before a higher court, the King's Bench, when Holt, lord chief justice, said: "He had committed a great contempt, and had I been there I would have fined him, and committed him till he paid the fine."

But, sir, I have done with English authority. Now, sir, it only remains to give construction to the words civil process in our statute. If an attachment issuing out of a criminal court is civil process, then have I been misled by books of authority; then have I mistakenly erred in deciding the law. If it is not civil process then my decision is law, and must stand approved, whatever this House may do. Oh, the peril to an independent judiciary. Would to God that a Marshall or a Kent, or Mansfield, had the decision of this great question. But, sir, I am not called upon to establish that the subpœna issued by the district attorney was criminal process. That burden is put on me. No lawyer will say it was civil process. I did not issue that. The statute makes it the duty of the district attorney to do that, and yet in theory it issues out of the Court of Terminer, and disobedience to its commands is regarded as contempt of that court. But the question is not that. If regularly issued, its service was good and not void. It was in the eye of the law a contempt to disobey it. And all the question that remains is, was the process issued upon that contempt a civil process? This honorable body is called upon to vote distinctly upon the meaning of those words. I am not unwilling to see that record of names. If with the light of intelligence of this day, if with that love for judicial independence, if with a patriotic desire to avoid conflicts between the co-ordinate and co-extensive departments of the sovereign power, if you shall act with freedom from all

spirit of wounded dignity, if with jealous care you feel that you are sitting both as accusers and judges; if you shall place yourselves upon that lofty plane of devotion to the Constitution and the best interests of this noble State; if it shall be your just pride to guard and protect the rights of an independent judiciary from the terrors of aggression of a co-ordinate power; then, sir, I have no fears of the result. Invoking these noble, these elevating considerations to your honorable body, I leave the case in your hands.

Mr. Speaker then informed Mr. Potter that he would retire to the library with the sergeant-at-arms until the House made decision in his case, such being one of the rules established by this body in this proceeding.

Mr. Potter then requested that he might remain upon the floor of the House until the House concluded its proceedings in his case.

On motion of Mr. Fields, so much of the resolution relating to the conduct of these proceedings (adopted by the House) as requires the retirement of Messrs. Potter, French and Benedict to the library of this House (when they shall have submitted their several excuses) until the House shall have taken action upon their several cases, be rescinded.

Mr. Fields offered for the consideration of the House a resolution, in the words following, to wit:

Resolved, That the Hon. Platt Potter, in issuing the attachment for the arrest of Hon. Henry Ray, a member of Assembly from the first district of the county of Ontario, was guilty of a high breach of the privileges of this House, and censurable therefor; and that he be reprimanded by the Speaker in the presence of this House.

Debate was had thereon, when Mr. Alvord offered the following amendment:

Strike out all after the word "Resolved," and insert the following: "That Hon. Platt Potter, Justice of the Supreme Court, was mistaken as to the privileges of this House in the action taken by him in the arrest of the Hon. Henry Ray, and did commit a breach of its privileges in so doing; but this House do not believe that any intent or desire to interfere with the independence or dignity of the House actuated him in the performance of that which he deemed his judicial duty."

Debate again ensued, when Mr. W. D. Murphy offered the following as an amendment to the amendment of Mr. Alvord:

Strike out all after the word "Resolved," and insert in lien thereof the words "That the Hon. Platt Potter, a justice of the Supreme Court

of this State, be discharged from the custody of this House until the hour of 12 o'clock on the first day of March, and that, in the meantime, the opinion of the Attorney-General be communicated to this House as to the construction of the term 'civil process' in the statutes exempting members of the Legislature from arrest."

Debate again ensuing, Mr. Husted moved the previous question.

Mr. Speaker put the question, "Shall the main question be now put?" and it was determined in the affirmative.

Mr. Speaker then put the question whether the House would agree to the amendment of Mr. W. D. Murphy, and it was determined in the negative.

Mr. Speaker then put the question whether the House would agree to the amendment of Mr. Alvord, and it was determined in the affirmative.

Mr. Speaker then put the question whether the House would agree to said resolution, as amended, and it was determined in the affirmative.

Mr. Speaker then declared Mr. Potter discharged from custody.

Mr. Windsor B. French then appeared at the bar of the House, and Mr. Speaker addressed him as follows:

"Mr. Windsor B. French, you have been summoned to the bar of the Assembly of the State of New York for a high breach of its privileges in causing, as district attorney, the issue of an attachment for the arrest of Hon. Henry Ray, a member of this House from the first district of Ontario county, under which he was arrested and taken from his duties as a member of this House, and conducted to Ballston Spa, in the county of Saratoga, there to testify before a grand jury of the Court of Oyer and Terminer. What have you to say in excuse for your conduct in the premises?"

Thereupon Mr. French submitted his reasons in excuse for his procedure in the case.

Mr. Fields offered for the consideration of the House a resolution, in the words following, to wit:

Resolved, That Windsor B. French, district attorney of Saratoga county, was in error as to the privileges of this House in the action taken by him in causing the arrest of Hon. Henry Ray, and did commit a breach of its privileges in so doing; but this House does not believe that any intent or desire to interfere with the independence or dignity of the House actuated him in the performance of what he deemed to be his duty.

Mr. Speaker put the question whether the House would agree to said resolution, and it was determined in the affirmative.

Mr. Speaker then ordered Mr. French discharged from custody.

Mr. Elisha D. Benedict then appeared before the bar of the House, and was addressed by the Speaker as follows:

"Mr. Elisha D. Benedict, you have been summoned to the bar of the Assembly of the State of New York, for a high breach of its privileges, in arresting, on an attachment, as deputy sheriff, the Hon. Henry Ray, a member of this House from the first district of Ontario county, and taking him from his duties, as a member of this House, to testify before a grand jury of the Court of Oyer and Terminer of the county of Saratoga. What have you to say in excuse for your conduct in the premises?"

Mr. Benedict then submitted his excuse.

Mr. Fields moved that Mr. Benedict be discharged from custody of the House, it appearing that he acted upon process *prima facie* legal, and in the discharge simply of a ministerial duty.

Mr. Speaker put the question whether the House would agree to said motion, and it was determined in the affirmative.

Mr. Speaker then declared Mr. Benedict discharged.

Assembly Journal, 1870, pages 312, 313 and 314.

In the Matter of the Breach of Privilege of Seymour Ainsworth,

CHARGED WITH COMBINATION TO OBTAIN PECUNIARY SATISFACTION FOR VOTING FOR ONE HUNDRED AND TWENTY-FIFTH STREET RAILROAD BILL.

ASSEMBLY CHAMBER, *March* 18, 1870.

Pending a call, Mr. Fields rose in his place to a question of privilege, and made certain allegations in relation to an interview with Mr. Ainsworth, a member of the House, relative to the bill under consideration.

Whereupon Mr. Ainsworth rose in his place and denied the allegations, and made certain charges against Mr. Fields in relation thereto, and asked that a committee of investigation be appointed thereon.

Mr. Kiernan offered for the consideration of the House a preamble and resolution in the words following, to wit:

Whereas, Hon. Thomas C. Fields, a member of this House, has publicly stated in his official capacity, that Mr. Ainsworth's action in voting against the passage of a bill commonly known as the One Hundred and Twenty-fifth street railroad bill, proceeded from unworthy motives; and whereas, said Fields did publicly charge that said Ainsworth waited on him, as the representative of ten members, who desired to be consulted and satisfied pecuniarily before they would vote for said bill.

Resolved, That a committee of five be appointed to investigate said charges, and report without delay to this House, and have power to send for persons and papers.

Mr. Fields rose to a question of order, and stated that he objected to the preamble of said resolution, for the reason that it did not state the allegations as made by him, and therefore should not be appended to the resolution, and asked that the stenographer should write out what was said by him in reference to the matter, and that when written it be substituted as the preamble.

Mr. Kiernan moved to lay the subject on the table for the present.

Mr. Speaker put the question whether the House would agree to said motion, and it was determined in the affirmative.

Assembly Journal, 1870, page 635.

ASSEMBLY CHAMBER, *March 18th*, 1871.

Mr. Kiernan called for the consideration of the preamble and resolution heretofore offered by him, and moved to amend by inserting after the word "capacity" the words "on the floor of the House."

Mr. Speaker put the question whether the House would agree to said motion, and it was determined in the affirmative.

Mr. Kiernan moved to strike out in the preamble as amended all after the word "House," and insert as follows:

CHARGE AGAINST MR. AINSWORTH.

"I rise to a question of privilege, my question is this, sir: I think it is about time that some man in this Assembly rose in his place, to preserve the dignity and propriety of this body, and I wish to state here in regard to this bill, that a gentleman, a member of this Assembly, waited upon me and told me that he was at the head of ten men, who would vote for or against this bill according as I made it convenient to him, and that gentleman was Mr. Ainsworth, a member from Saratoga. I stand as a democrat here to preserve the dignity of this House. It has come to this pass, that no measure can be pre-

sented to this House which can be passed without such influence and interest, as no man in my position, here as a democrat in this House and in this State, can consider otherwise than as infamous, disgraceful, and beneath the dignity and character of this House; and sir, I have sat in my seat as long as I will sit; I have sat in my seat and been here as the advocate, the friend, and slave of the members of this House, laboring day and night, hour after hour, to promote the public interests of this State, and when any bill is proposed that has a private character, I have been approached in such a manner, that any gentleman having principles and character cannot sit quietly here, and I denounce it. It is disgraceful to this House; it is beneath the dignity and character of a representative of the people, and I want to brand here, as I will brand it always, as beneath the character of a representative of the people. Here is a bill Mr. Speaker, simply to put up at auction in the city of New York the right to lay a railroad in a street, and because it is a railroad in my district, I, as a gentleman who might be supposed to advocate this bill upon the floor, am approached in the manner that I have just been approached. And I will repel, as I have repelled it in this instance, all approaches of that character. I regret to say that I am compelled to do what I am doing now for the dignity and character of this House, and I say here, sir, I ask no gentleman to vote in favor of any bill that I may present unless it is fair and reasonable that it should be voted for; and I also, say, that any bill relating to my district ought not to be opposed because some gentleman imagines that it confers benefits upon others. I say that no gentleman has a right to make such approaches as have been made to me on this bill."

Mr. Speaker put the question whether the House would agree to said motion of Mr. Kiernan, and it was determined in the affirmative.

Mr. Mosely moved to insert the following as an additional preamble:

And, whereas, Said Ainsworth did, in his official capacity as a member of the Legislature, publicly charge that said Fields did on the floor of the House, while the said bill was pending, violently and with oaths threaten said Ainsworth, that if he did not vote for said bill, he, said Fields, would defeat every bill he, said Ainsworth, had before the Legislature.

Mr. Fields rose to a question of privilege, and raised the point of order, that as no such language had been reduced to writing by the stenographer, it could form no portion of the preamble, and therefore could not be taken cognizance of by the House.

Mr. Speaker inquired of the stenographer if he took the language

of Mr. Ainsworth, and he informed the Speaker that he did not, for the reason that it was to him inaudible.

Mr. Speaker decided the point of order well taken.

Mr. Ainsworth then rose to address the chair, and was stating what Mr. Fields said to him, when

Mr. Fields again rose to a point of order, and maintained that it was now too late for Mr. Ainsworth to make his statement until the matter under consideration was disposed of, other business having intervened.

Mr. Speaker decided the point of order well taken.

Mr. Mosely appealed from the decision of the chair, on the first mentioned point of order.

Mr. Speaker put the question, "Shall the decision of the chair stand as the judgment of the House?" And it was determined in the negative.

Ayes, 24. Noes, 78.

Mr. Lanahan moved the previous question.

Mr. Fields offered the following amendment to the resolution:

Add at the end of said resolution the words, "and that the committee also examine into all, any and every conversation which may have taken place between members, or between any member and all other persons, in relation to the passage of any measures now before the House, or which have been before the House.

Mr. Lanahan called for the question on his motion.

Mr. Littlejohn raised the point of order; that this resolution of Mr. Fields, being a high question of privilege, it overrode the previous question.

Mr. Speaker decided the point of order well taken.

Mr. Speaker then put the question whether the House would agree to said amendment of Mr. Fields, and it was determined in the negative.

Debate ensued, when Mr. Speaker put the question whether the House would agree to said amendment of Mr. Mosely, and it was determined in the affirmative.

Mr. Speaker then put the question whether the House would agree to said resolution as amended, and it was determined in the affirmative.

COMMITTEE APPOINTED.

Mr. Speaker appointed Messrs. Littlejohn, Patrick, Snow, Selkreg and Kiernan as such committee.

Assembly Journal, 1870, pages 638, 639, 640.

REPORT OF THE SPECIAL COMMITTEE IN THE MATTER OF THE CHARGES OF MR. FIELDS AGAINST MR. AINSWORTH.

IN ASSEMBLY, *March* 23, 1870.

Your committee, appointed in pursuance of the following resolution, viz.:

Whereas, Hon. Thomas C. Fields, a member of this House, in his official capacity, on the floor of this House, said: "I rise to a question of privilege; my question is this, sir: I think it is about time that some man in this Assembly arose in his place to preserve the dignity and propriety of this body, and I wish to state here, in regard to this bill, that a gentleman, a member of this Assembly, waited upon me and told me that he was at the head of ten men, who would vote for or against this bill, according as I made it convenient to him; and that gentleman was Mr. Ainsworth, a member from Saratoga. I stand, as a democrat, here, to preserve the dignity of this House. It has come to this pass, that no measure can be presented to this House which can be passed without such influence and interest as no man in my position here, as a democrat, in this House and in this State, can consider as otherwise than infamous, disgraceful, and beneath the dignity and character of this House; and, sir, I have sat in my seat as long as I will sit. I have sat in my seat, and been here as the advocate, the friend and slave of the members of this House, laboring day and night, hour after hour, to promote the public interests of this State; and when any bill is proposed that has a private character, I have been approached in such a manner that any gentleman, having principles and character, cannot sit quietly here, and I denounce it. It is disgraceful to this House; it is beneath the dignity and character of a representative of the people. Here is a bill, Mr. Speaker, simply to put up at auction, in the city of New York, the right to lay a railroad in my district. I, as a gentleman who might be supposed to advocate this bill upon the floor; I am approached in the manner that I have just been approached, and I will repel, as I have repelled it in this instance, all approaches of that character. I regret, to-day, that I am compelled to do what I am doing now, for the dignity and character of this House; and I say here, sir, I ask no gentleman to vote in favor of any bill that I may present, unless it is is fair and reasonable that it should be voted for; and I also say that any bill relating to my district ought not to be opposed because some gentleman imagines that it confers benefits upon others. I say that no gentleman has a right to make such approaches as have been made to me on this bill."

"*And, whereas,* Said Ainsworth did, in his official capacity, as a member of the Legislature, publicly charge that said Fields did, on the floor of the House, while the said bill was pending, violently and with oaths threaten said Ainsworth, that if he did not vote for said bill, he, said Fields, would defeat every bill he, said Ainsworth, had before the Legislature.

"*Resolved,* That a committee of five be appointed to investigate said charges, and report without delay to this House, and have power to send for persons and papers."

Respectfully report: That they have taken the testimony of such persons as they could learn had any knowledge of the matter referred to them, which testimony is submitted herewith for the information of the House.

The statements made by Mr. Fields, of New York, in reference to Mr. Ainsworth, of Saratoga, is sustained by his own testimony, while Mr. Ainsworth positively denies its truthfulness. No other persons were present at the alleged interview.

Mr. Fields admits that the language imputed to him was used by him in a moment of excitement toward Mr. Ainsworth. The evidence of Messrs. Droll, Franklin and Mosely confirms the statement made by Mr. Ainsworth and admitted by Mr. Fields in reference to the language used by the latter.

Your committee feel that they have discharged their duty in roporting the evidence and facts, as they appear, to the House for consideration.

D. C. LITTLEJOHN.
W. W. SNOW.
J. H. SELKREG.
EDWARD L. PATRICK.
LAW. D. KIERNAN.

TESTIMONY TAKEN BEFORE THE SPECIAL COMMITTEE IN THE MATTER OF THE CHARGES OF MR. FIELDS AGAINST MR. AINSWORTH.

ALBANY, *March 22d.*

The special committee of five, appointed to investigate the charge made by Mr. Fields in the House of Assembly, on March 18th, at the morning session, and the countercharge made by Mr. Ainsworth against Mr. Fields, met to-day, all the committee being present; and Mr. Littlejohn, the chairman, presiding, with the several witnesses whose testimony is given below. The resolution appointing the com-

mittee was read in the presence of these witnesses and they were then required to leave the room, one being called in at a time.

The following testimony was then taken, the questions being put indiscriminately by the members of the committee:

THOMAS C. FIELDS, sworn:

Q. Are you a member of the House of Assembly, and if so, from what county and district? A. I am a representative in the Assembly of the State of New York, from the nineteenth Assembly district of the city of New York. I reside at 140th street, between eleventh and twelfth avenues, in the said nineteenth Assembly district.

Q. What have you to say respecting the statement made by you on the floor of the House, embodied in the resolution appointing this committee, which you have heard read? A. The statement embodied in that resolution, so far as it relates to the conversation between Mr. Ainsworth and myself, is true. As to the particular date of the conversation it is impossible for me to state, but it was within three or four days of last Friday.

Q. Then it was not upon the day that the bill was under consideration? A. It was not on the day that the bill was up the last time for reading, but some days previous, and within three or four days of that time. It was since the bill was ordered to a third reading.

Q. Where did this conversation take place? A. At my desk, in the Assembly Chamber.

Q. Will you not state in reference to what subject that conversation took place, or do you remember? A. One day, as I passed Mr. Ainsworth's seat, I am quite positive I made this remark: "Why is it that you vote against nearly every bill that relates to matters in my district? I have aided you in the passage of your bills relating to your district all in my power;" I am not positive that Mr. Ainsworth made any reply; I do not think he did; after that Mr. Ainsworth came over to my desk, whether that day or the day following I am not positive; and at my desk, I sitting and he standing by the side of my chair, this conversation referred to in the resolution occurred.

Q. Is that conversation stated in the resolution, in the words that occurred, as nearly as you can state it? A. As nearly as I can state it.

Q. What was the impression upon your mind at the time he made this statement? A. I could not say what the impression was; it was a subject upon which I, at the time, did not draw any conclusion or receive any impression, and I made no reply to the statement Mr. Ainsworth made to me.

Q. Was it your impression at the time he made the statement that the statement was true, that he was at the head of a number of men, or did it not impress itself enough upon your mind at the time to make you form any conclusion in regard to the matter? A. It was a subject upon which I desired to have no impression at the time, and I could not state now that any impression was made on my mind.

Q. Mr. Fields, what did you mean when you stated that Mr. Ainsworth said he was at the head of ten men who would vote for or against your bill, according as you made it convenient for him? A. I mean that he said that to me.

Q. What did you understand by making it convenient? A. As I did not make the suggestion to Mr. Ainsworth I cannot give his interpretation of it; I can only state what occurred.

Q. What did you presume was his meaning? A. It was a subject upon which I had no presumption whatever.

Q. Did you form any conclusions in your own mind as to what he did mean? A. I cannot say that I did; there are some subjects that are brought to our consideration that are of such a character that, while we may listen to the statements, we do not desire to draw any conclusions upon them or have any opinions in regard to them. This was such a statement.

Q. Did Mr. Ainsworth vote in the negative on the passage of this railroad bill of yours? A. He did, as I understand his vote.

Q. When you rose to make the statement which you made in regard to Mr. Ainsworth, were you under the impression then that his propositions were of an improper kind? A. I cannot say that I had any impression about it. I rose to make the statement, considering it one that should be made, that the House might draw such inferences and deductions from as the House should deem meet.

Q. What impression did you intend to leave upon the House? A. I intended to leave no other impression than simply what the statement of the conversation that occurred would leave upon the House itself.

Q. Did you not believe, at the time the vote was being taken upon your bill, after his vote was recorded in the negative, that the proposition to vote for the bill with ten others—that his intimation that ten others would vote with him as you made it convenient—did you not believe at the time you rose and addressed the House, that that was a corrupt proposition? A. I had no belief about it; I considered it a statement that ought to be made to the House, to be taken into con-

sideration with the vote on the bill before the House, that the House might draw such conclusions as it saw fit.

Q. What conclusion did you draw from his saying that he was at the head of ten men? A. I simply drew the conclusion that he made such a statement to me.

Q. What conclusion did you draw from the statement? A. I cannot say that I drew any.

Q. What did you think he meant by the statement? A. Well, of course my training has taught me to know that it is not my province to say what other men thought or meant, and, therefore, I cannot draw any conclusion as to what Mr. Ainsworth meant.

Q. You say that Mr. Ainsworth's statement to you was made within three or four days of the time you gave it to the House? A. It was after the bill was ordered to a third reading, and a day or two prior to the 19th; it might have been the day before, or two days before; it was between those two points.

Q. It was not repeated on this occasion when you gave the statement to the House? A. No, sir.

Q. Did you suppose that Mr. Ainsworth was actuated by any unworthy motives when he made this statement to you? A. As I said before, it was not within my province to interpret Mr. Ainsworth's thoughts, or even his desires.

Q. Suppose, Mr. Fields, that you had been in the habit of consulting unworthy means of having any measure of yours passed through the House, would you have considered the language of Mr. Ainsworth to be a proposition to assist for a consideration, and have replied to him on that supposition? A. Not being in that habit, I cannot answer the question.

Q. Then, Mr. Fields, the committee is to understand that you did not intend to make any charge of corrupt intent or motive against Mr. Ainsworth? A. The committee is to understand that I said on the floor of the House exactly what I intended to say, to present the subject before the House for the House to draw such conclusions as it saw fit, it being a subject upon which I had no right to draw any conclusion, or to create any impression from any act or word of mine.

Q. Were you under the impression that your remarks left a favorable or unfavorable impression upon the House regarding the character of Ainsworth? A. I had no impression at the time about it, either one way or the other.

Q. Nor since that time? A. I can only say that, like all other statements, its must be weighed and judged according to its strength

at the time it was made. I mean its semblance of truthfulness and the surrounding circumstances and occurrences which took place.

Q. You did not intend to prejudice the House against the character of Mr. Ainsworth? A. I did not intend improperly to prejudice the House against the character of Mr. Ainsworth; I did not intend to create any impression other than that which a statement of this character would present to the minds of fair and judicious men, such as legislators should be.

Q. Will you answer me one question, yes or no? A. It depends upon the kind of question it is.

Q. Do you, in giving your testimony before this committee, make the charge that Mr. Ainsworth approached you improperly, with a view to traffic his and other men's votes to you for this bill? A. I intend, in my statement before this committee, to simply present the circumstances and the conversation as it occurred, as it was stated by me upon the floor of the House; it is not for me to draw any deduction or conclusion; but it is for those who are the judges to draw such conclusions as the circumstances in the case will warrant.

Q. Then you make no charge against Mr. Ainsworth? A. I make no statement of any character in relation to this matter which is not embodied in the language which I used, and which is ingrafted into that resolution.

Q. And that language, so far as you remember, is exactly the language used by Mr. Ainsworth to you? A. That language, so far as I remember, is the conversation, as one man would translate the statement of another individual; each letter and each syllable may not be exactly the same, but it is as near as I can at this time come to the conversation.

Q. You did not make the statement at all for the purpose of prejudicing the minds of the members of the House or the minds of the people of the State against Mr. Ainsworth as a representative man? A. Not in the least, any further than the statement itself would produce that result; if it would produce that result, of course to be weighed and controlled, as I said before, by the surrounding circumstances, and each individual and the great mass of the people of the State must make up their judgment from all these circumstances.

Q. From what motive did you make this announcement to the House? A. No other motive than a member of the Legislature ought to be controlled by, that the House should become acquainted with all the circumstances which surround the passage of the bill, so far as each member may think it best to inform the House of these circumstances.

Q. And you had no other motive? A. No, sir.

Q. Was there no other member of the House, or other individual, that heard the conversation between Mr. Ainsworth and yourself? A. I do not think there was, sir; it was made at my desk, in an undertone.

Q. Did Mr. Ainsworth mention any other member of the House who belonged to this combination? A. He mentioned no others, except in the way presented in my statement to the House.

Q. He did not mention to you the name of any member of the House who belonged to this combination stated by you? A. I did not say there was a combination.

Q. I mean this combination referred to in your statement? A. He gave me the name of no individual that belonged to any combination.

Q. Can you give the committee any information to assist them in ascertaining whether there were such men associated with Mr. Ainsworth? A. Well, I never swam in that kind of water, and I do not think that I could teach the committee anything upon that subject; I desire to say this, that if you are through with this branch of the resolution, that I have no doubt that, in the excitement of the moment, and smarting under the indignant feeling which I had at the time, that I made the very statement to Mr. Ainsworth which he states I made; and I also desire to state to the committee that it was probably an improper statement for me to make upon the floor of the House; it was made to Mr. Ainsworth in a low tone, but whether loud or low, it was, in my judgment, improper to be made, and as a frank man, I desire to say that I have no doubt I made it, and I have no doubt, further, but what my language had a great deal more strength than elegance.

Q. Do you recollect that a bill of Mr. Ainsworth's passed immediately after this bill of yours; a bill introduced by Mr. Ainsworth concerning the Saratoga Springs; that it passed during this excitement? A. I do not know anything about it; so far as my own conduct is concerned, I never let a personal prejudice or pique, or anything of that kind, influence me in my public action.

Q. Such a bill passed and Mr. Fields voted for it amid the excitement? A. Very likely; what had happened would not control my action in the least in respect to Mr. Ainsworth's bills.

Q. Do you desire that the committee, each one for himself, shall draw his own inference as to the signification of the word "convenient," or do you desire to explain what, to you, it meant? A. That is a matter entirely within the province of the committee; I can only

say that there are a great many distinguished authors that will give the definition of the phrase much better than I can do.

SEYMOUR AINSWORTH, sworn:

Q. Are you a member of the House of Assembly? A. Yes, sir.

Q. From what county and district? A. The second district of Saratoga.

Q. Mr. Fields, member from New York, made a certain statement upon the floor of the House, which is contained in the preamble of the resolution appointing this committee; is that statement correct? A. It is false; it is not correct.

Q. Did you at any time, or in any place, state to Mr. Fields that you and others would vote for or against his bill, a bill for a railroad in 125th street, according as it could be made convenient to you? A. No, sir; no one ever spoke to me of a bill in Albany, with the exception of a gentleman from New York, who was not a member of the Assembly; no member ever did.

Q. Did you ever go to the desk of Mr. Fields, and have a conversation with him in reference to this bill? A. No, sir; not in reference to this bill.

Q. Did you ever go to Mr. Fields' desk, and have a conversation with him in reference to any bill? A. I will state the facts. I went to Mr. Fields' desk one day, and stated to him that I had an avenue bill introduced, and that if he could help me I would be much obliged to him. He said he would do so. Soon after that I passed his desk, and he said, "My bridge bill is coming up in a few days, and I wish you would do me what good you can." I said, "I will do you any good I can, with pleasure." I think that was a week ago to-day, or a week ago last Friday. It was one of those days, I am not positive which. And then, as you wish to know the facts, I will state that one day Mr. White, a friend of mine, said, "Let us go up into Mr. Fields' room." I said, "Very well," and went up with Mr. White. Mr. Fields says to me, "Mr. Ainsworth, you have got along with your legislation very well; you have succeeded first-rate with your bills." "Yes," I said, "and I feel much pleased about it, too." "Well," he said, "Mr. Ainsworth, you are in a committee of nine or ten men there; you ought to have some influence with them, and now that you have got through with your legislation, you must try to help us."

Q. What committee is this? A. The committee on privileges.

Q. How many are in it? A. Nine; I said to Mr. Fields "Any-

thing I can do for you I will do with pleasure;" I think Mr. John White, of Saratoga, heard the conversation.

Q. The conversation at Mr. Fields' desk was a week ago to-day or week ago last Friday? A. Yes; I think it was one of those two days; it was the day I introduced our avenue bill, I think; I asked him to assist it through; he has always assisted me in those bills.

Q. Did you one week ago to-day, or any time within the last ten days, say to Mr. Fields that you was at the head of ten men who would vote for or against this bill, according as you made it convenient to him? A. No, sir; it is false, every word of it.

Q. Do you know of any such organization? A. No, sir.

Q. Are you associated with any such organization? A. No, sir; nothing of the kind.

Q. Have you any understanding, of any character whatever, with any number of men, be they more or less, in regard to your action upon any members before the House? A. No, sir, I had not; I will tell you the fact about it; since this thing happened parties have said to me, "Mr. Ainsworth, I do not know but what we must do something to protect ourselves;" but as for being in any combination I am not, and was not, in any shape.

Q. Do you know of the existence of an agreement between any member or members in the Assembly to cast their votes for a consideration or for pay? A. No, sir, I do not; no man can say that he ever influenced me in such a way, or that I ever voted for any bill for a compensation.

Q. What further conversation took place at Mr. Fields' desk besides what you have stated? A. None at all; he hailed me after I had asked him to assist me on my avenue bill.

Q. That was the entire conversation? A. That was all.

Q. When these men approached you about forming a combination, with a view of protecting themselves, what inference did you draw? A. That they wanted we should protect ourselves; to try to be sure of passing our own bills; that is, our bills in the country; there were some country members came to me and said: "The city members say they will defeat all our bills, and it may be necessary for us to have an understanding together, in order to pass our bills; you understand just what I mean, that we should stick together to pass our own bills."

Q. When did this conversation or occurrence take place to which you have just referred? A. Yesterday.

Q. Had any such understanding ever existed prior to the passage

of the 125th railroad bill, between you and other members of the House? A. Not at all; no understanding of that kind.

Q. I understand, when you speak of protecting yourselves in the passage of your own bills, that they were local bills, such as would ordinarily pass unless some effort was made to defeat them; they were such bills as were proper subjects of legislation? A. Yes; such bills as country members have.

Q. Bills affecting your Assembly districts; of a local character? A. Yes, sir.

Q. Did you think that when Mr. Fields charged you, or, at least, stated that you were at the head of ten men, who would vote for or against any measure, if he made it convenient to you, did you think he meant to impute to you unworthy motives? A. Why, yes, sir; of course.

Q. Do you know the general impression which prevailed among members in reference to the remark made by Mr. Fields? A. I do not understand the question.

Q. The general impression which prevailed in regard to the remarks made by Mr. Fields? A. Prevailed when?

Q. After he made the remarks, of course; what we want to get at is, did the members generally conceive that Mr. Fields wanted to impute unworthy motives to you; do you know the general opinion as to that? A. I do not know the general opinion any more than what I know of those sitting near me.

Q. What was their impression? A. Their opinion was that he attempted to intimidate me to vote for his bill.

Q. But not to make unworthy charges against your character? A. That is all I know of it, sir.

Q. Neither you nor any other member thought that Mr. Fields wanted to injure your character by the remarks he made? A. I do not know what he meant.

Q. What did you feel about it? A. I felt that he must have intended to injure my character to come to my desk in that way.

Q. I mean when he made the remarks about your having said that you and others would vote for or against his bill, according as he made it convenient to you? A. I never made any such remarks.

Q. When he repeated those words which he charged were uttered by you do you think that he desired to injure your character personally or politically? A. Well, I don't know how to answer that question.

Q. I have reference to the remarks made by Mr. Fields upon the floor of the House? A. I do not know the impression made, of course.

Q. Do you believe, yourself, that he intended, by these remarks, to injure your character? A. Why, of course he did; he must not have done so; my opinion is that he did; I feel that he did, and I cannot think any other way.

Q. Did you feel that the statement was made in the House by him; that it was calculated to injure your position in the House and before the people of the State? A. Yes, sir, I did.

Q. Mr. Ainsworth, since that statement was made public, and the public have read the statement, have you any occasion to change your first impression in regard to the effect it would work upon yourself? A. No sir; I have not.

Q. Mr. Ainsworth, have you any knowledge whatever of the motive which inspired Mr. Fields to make that statement before the House? A. Why, no, sir; no knowledge of it at all; I know nothing about it; I cannot conceive why he should make this statement.

Q. What meaning did you draw from that word convenient, which he used in reference to your character? A. I do not know; I cannot say, I was so offended, sir; I do not know that I could say that I drew any meaning from the expression at all; I think the whole thing an insult of the grossest kind.

Q. You don't think that Fields intended positively to assail your character or honesty as a representative? A. I don't see how I should take any other meaning from his language.

Q. Do you think the word convenient means to imply dishonesty? A. I should think it must, as it was used at that time and in that place.

Q. Did you think that Mr. Fields intended, by that word convenient, to imply or impute to your character dishonesty? A. I do sir.

Q. Mr. Ainsworth, was the impression left upon your mind at the time the statement was made that its publication would be detrimental to your character? A. Oh, yes.

Q. (The part of the resolution containing Mr. Ainsworth's charge against Mr. Fields being read to Mr. Ainsworth.) You made that statement before the House; do you reiterate upon oath? A. Yes, sir.

Q. Do you wish to state anything further about it? A. It occurred at my desk; there is no more to say than that those are the words precisely; he said other things to me which I cannot prove; but if you don't wish to go into it ———

Q. What was the language he used when he turned round to leave

your desk? A. He ripped out an oath, and said I will make you sorry, or you will be sorry.

Q. Sorry for what? A. Well, if I would vote for this bill of his; this was after this conversation in which he said he would defeat my bills; the gentleman that heard the conversation, Mr. Droll or others, might tell you the exact words which were, I will make you sorry, or you will be sorry; I think he said you will be sorry; I will not be certain.

Q. Was this language used by Mr. Fields while the vote was being taken upon the bill before the result was announced? A. Yes, sir.

Q. At the time of this conversation, as said to have taken place, between you and Mr. Fields, who else was present? A. Well, sir, there were several seated near me who must have heard it.

Q. At the time the conversation took place in which Mr. Fields ascribed the language to you, that you were at the head of ten men who would vote for or against his bill, according as he made it convenient to you, who were present? A. I never heard any such conversation; I never knew any such conversation.

Q. This occasion, when Mr. Fields came to your desk, was while the roll was being called, after you voted? A. Yes, sir.

Q. What gentleman heard you make these threats, or use this language? A. Well, sir, Mr. Moseley, Mr. Droll, Mr. Franklin, Mr. Pierce; I have heard all these gentlemen say they heard it; I think they will verify it.

Q. Is there anything that you desire to say to this committee? A. Well, sir, I do not know anything, particularly, that I desire to state.

JOSEPH DROLL, sworn:

Q. Are you a member of the House of Assembly? A. Yes, sir.

Q. From what county and district? A. From the eighth district of Kings.

Q. Were you present in the House on Friday last, when the vote was being taken upon the final passage of the 125th railroad bill? A. I was.

Q. Did you hear the remarks made by Mr. Fields of another member upon that occasion? A. Partly.

Q. Did you hear Mr. Fields charge Mr. Ainsworth with having approached him, and, in substance, offer him ten votes if it were made convenient to him? A. Yes, I heard Mr. Fields make that statement.

Q. Were you present at the conversation where Mr. Fields claims that Mr. Ainsworth made that offer to him? A. No, sir.

Q. Have you any knowledge of Mr. Ainsworth being connected with an association of ten persons, more or less? A. I have not.

Q. Have you any knowledge of any organization of this character in this House to influence votes? A. I have not.

Q. Mr. Ainsworth, on the other hand, made the statement on the floor. (Mr. Ainsworth's statement in regard to Mr. Fields, as embodied in the resolution appointing a committee, was here read to witness.) Did you hear any such conversation between Mr. Fields and Mr. Ainsworth? A. I did, sir.

Q. Did you sit near him? A. Next seat but one.

Q. Can you repeat that conversation in your own language? A. I think I can. Mr. Fields came over to Mr. Ainsworth after the name of Mr. Ainsworth had been called on to vote and some six or seven other names, and he said to Mr. Ainsworth "Aint you going to vote for my bill?" Mr. Ainsworth answered that he had already voted. Mr. Fields said "You will be sorry for this." Mr Ainsworth said "I have voted no already, and do not wish to be intimidated by you or anybody else." Then Mr. Fields walked back toward his seat and he said "Damn it, I will beat every damn bill of yours that comes up this session."

Q. Did Mr. Fields state this under excitement, as though he meant it? A. I suppose he did.

Q. Was he excited at the time he made the remark? A. He seemed to be very much so.

Q. You are a member of the House of Assembly? A. Yes, sir.

Q. From what county and district? A. Erie county, the second district.

Q. Were you in the Assembly chamber on Friday last when the vote was being taken upon the final passage of the 125th railroad bill? A. I was, sir.

Q. Did you hear the language uttered by Mr. Fields, upon the floor at that time, pending that vote? A. I heard some of the language distinctly.

Q. Did you hear the language which I shall read (Mr. Fields' language as embodied in the resolution appointing the committee, was here read to witness)? A. I heard Mr. Fields use such language.

Q. Were you present at the interview between Mr. Ainsworth and Mr. Fields at the time this language was uttered, as claimed by Mr.

Fields? A. I never heard Mr. Ainsworth make any such statement to Mr Fields.

Q. Have you any knowledge of Mr. Ainsworth being at the head of an association of ten or other number of persons with a view to casting votes? A. I never heard of such a combination.

Q. Have you any knowledge of the existence of such an organization in the House? A. I have not. No man ever spoke to me in such a way.

Q. Have you any knowledge of any agreement among members, more or less in numbers, to cast their votes upon measures that may come before the Assembly, from any corrupt motive? A. I have never been in company with any member of the House who talked on such subjects. I am a man that stands alone, go to my victuals and come back again myself.

Q. Then you have no knowledge of such an organization, if such exists? A. None whatever, sir.

Q. Did you hear the language which I shall read to you? (Mr. Ainsworth's statement of the language used by Mr. Fields toward him, as embodied in the resolution appointing the committee, was here read to witness.) A. I heard Mr. Ainsworth make that statement.

Q. Did you hear Mr. Fields make any such threat? A. Mr. Fields left his seat and said hurriedly to Mr. Ainsworth, "Ainsworth change your vote change your vote;" Mr. Fields had his back to me, and he said; "By God," and carried out the sentence, which I did not hear; then Mr. Fields turned round, with his face toward the Speaker's chair, and I heard him say distinctly, and in a very excited manner, "Jesus Christ? You will be sorry for this; no God damned man will carry a bill through this House that votes against my bill!" Mr. Fields was very much excited, and walked away then toward the Speaker's desk.

Q. Did you think that Mr. Fields meant what he said? A. It is not for me to say; he was very much excited.

Q. Do you think that it was possible for him to carry out such a threat? A. No sir: I thought he was speaking in a moment of excitement; I did not take the trouble to think whether he meant it or not.

Q. Well do you think now, upon deliberate reflection, that Mr. Fields meant what he said, when he said he would defeat every bill of Mr Ainsworth's? A. I did not hear him say that he would defeat every bill of Mr. Ainsworth's; I heard him say that no God damn man that voted against his bill should cary a bill through the House.

Q. Well, do you think that he was in earnest in saying that? A. I do not know whether I would be justified in saying that; the mode of his expression was very much excited.

WILLIAM M. MOSELEY, sworn:

Q. Are you a member of the House? A. Yes, sir.

Q. From what county and district? A. The fourth district of Kings county.

Q. Were you in the Assembly Chamber on Friday last, when the vote was being taken on the final passage of the 125th railroad bill? A. Yes, sir.

Q. Did you hear Mr. Fields address the House at that time, making charges againt a member? A. Yes, sir.

Q. (The statement of Mr. Fields, as embodied in the resolution appointing the committee, was read to witness.) Did you hear Mr. Fields make that statement? A. Yes, sir.

Q. Were you present at any conversation between Mr. Ainsworth and Mr. Fields, previous to this period? A. Not at the conversation referred to in that speech; I heard of no such conversation.

Q. Nor any conversation affecting the passage of a bill before the Legislature? A. No, sir.

Q. Are you acquainted with Mr. Ainsworth? A. Yes, sir.

Q. How long have you known him? A. Only after he came to his present seat.

Q. Have yon any knowledge of Mr. Ainsworth having any such association with ten men, more or less? A. None, whatever.

Q. Have you any knowledge of any such organization? A. None, whatever.

Q. Do you know of any agreement among members, by which they are to cast their votes solidly together upon any bills? A. No, sir. I may state here that I never heard Mr. Ainsworth speak of this bill previous to that time.

Q. How near do you sit to him? A. The very next seat.

Q. And you never heard him utter an opinion in regard to this bill? A. Never till the day that the bill passed.

Q. He never told you how he would vote? A. No, sir; I did not know how he was going to vote.

Q. Did you hear a conversation between Mr. Fields and Mr. Ainsworth, pending the vote upon that bill? A. Well, I heard it in disjoined parts. Although sitting next to him, my attention was taken up with something else, but still I heard part of the conversation.

Mr. Fields asked him to change his vote and vote for his bill. I heard that. Then they continued the conversation, and finally I heard Fields make a remark, the substance of which was, that he would be damned if he would not defeat any bill that Mr. Ainsworth had in the Assembly.

Q. Did he say this in a cool manner, or under excitement? A. I should judge that he was under very heavy excitment.

Q. Was not this conversation in the nature of a threat to intimidate Mr. Ainsworth, and compel him to vote in favor of the bill? A. Well, I do not think it left that impression upon my mind; it is a remark that I have heard very frequently.

Q. You thought Mr. Fields in earnest about it; that he meant it? A. I could not suppose that he meant anything but what he said; it was perfectly clear that he did.

Q. Do you suppose that, if at the time Mr. Fields made this threat, he had been called upon to vote upon a bill of Mr. Ainsworth's, that he would have voted against it, because of his feeling? A. I think he would.

Q. Do you suppose, that on cool reflection, he would have done so? A. That is a question that I cannot answer. I am not acquainted enough with Mr. Fields' disposition to say. I think that if a bill of Mr. Ainsworth's had come to a vote just after the 125th railroad bill was disposed of, that Mr. Fields would have been very apt to vote against it.

Q. Were you aware that Mr. Fields voted for one of Mr. Ainsworth's bills a few minutes after his own bill was disposed of? A. My impression would have been that he would vote against a bill of Mr. Ainsworth's at that time.

Assembly Document, vol. 7, 1870, No. 141.

In the Matter of the Breach of Privilege of James Irving,

FOR ASSAULT ON HON. SMITH M. WEED.

ASSEMBLY CHAMBER, *April 7th*, 1871.

Pending a call a difficulty arose upon the floor of the House between Mr. Irving of New York and Mr. Weed of Clinton.

Whereupon Mr. Fields moved the appointment of a committee of five to investigate the conduct of the gentlemen named, and that such committee report to the House to-morrow morning.

Mr. Speaker put the question whether the House would agree to said motion, and it was determined in the affirmative.

COMMITTEE APPOINTED.

Messrs. Fields, Littlejohn, Alvord, Frear and Nicholas were appointed such committee.

Assembly journal, 1871, page 1353.

RESIGNATION OF JAMES IRVING.

ASSEMBLY CHAMBER, *April 10th*, 1871.

Mr. Speaker announced that Hon. Mr. Irving had tendered his resignation as a member of the House, and that he (Mr. Speaker) had received the same and filed it in the office of Secretary of State.

Mr. Speaker in connection therewith presented the following statement of Mr. Irving:

To the Honorable Speaker of the Assembly:

SIR.—There is no man who thinks on his past life but calls to mind words that he would wish unspoken and things done that he would wish undone. We all of us have much to regret and much to forgive.

For my share in the unhappy occurrence of last Friday evening, which occupies the attention of the House, I am sincerely sorry. If in the heat of anger and under the spur of what seemed to me great provocation, I have committed an act violating the proprieties of the House and offensive to its dignity, I desire to offer an ample apology.

I yield to no man in respect to this House. I have been for six years a member of it. I am, I think, the oldest member, and although Providence did not bless my early career with that culture which graces so many other gentlemen of this House, yet I have enjoyed the friendship of many members, and until recently the kindly acquaintance of them all. I do not seek to mitigate any proper censure that

may be due to me, or defend an act which I know was in violation of the decorum necessary in all legislative bodies, yet I think it due to myself to say that the unfortunate altercation between the member from Clinton and myself would never have occurred had not his conduct toward me on that occasion and for some time past satisfied me of the existence of a settled desire on his part to irritate and insult me. I distinctly state that I was struck by the member from Clinton before I raised my hand against him.

In conclusion, I thank the House with all my heart for the continued kindness with which I have been treated by it, and, with no less earnestness and sincerity, renew the assurance of my deep regret that any act of mine should have diminished that feeling, or changed the relations we have borne toward each other.

Respectfully,

JAMES IRVING.

Mr. Fields, from the select committee appointed to investigate the conduct of Messrs. Irving and Weed, stated that inasmuch as the resignation of Mr. Irving, the member from New York, had been received by the Speaker of the House and filed in the office of the Secretary of State, and after reading the apology of the member from New York, was of opinion that the power of the committee in the premises ceased.

Mr. Alvord rose in his place, and insisted that the unanimous report of the committee should be acted upon by the House.

After debate, Mr. Fields, from said committee, introduced the following resolution:

Resolved, That the Assembly now adjourn until eleven o'clock to-morrow morning, and that in the event of the special committee appointed by the House to investigate the conduct of Messrs. Weed and Irving on the evening of the seventh instant, not being then prepared to report, that the House then take a recess until seven o'clock to-morrow evening.

Mr. Speaker put the question whether the House would agree to said resolution, and it was determined in the affirmative.

Assembly Journal, 1871, pages 1401, 1402.

REPORT OF COMMITTEE.

ASSEMBLY CHAMBER, *April 11th*, 1871.

Mr. Fields, from the special committee appointed to investigate the conduct of Messrs. Weed and Irving, submitted the following report:

The special committee appointed on the part of the House under the following resolution:

On motion of Mr. Fields,

Resolved, That a committee of five be appointed by the Speaker to investigate the difficulty arising between the gentleman from New York, Mr. Irving, and the gentleman from Clinton, Mr. Weed, on the evening of April 7th, 1871, and that said committee have power to send for persons and papers,

Respectfully report: That they entered upon the discharge of their duties at 9 A. M. on the 8th day of April, and have been engaged nearly continuously in the investigation up to this time; that they have examined a large number of witnesses and taken a large quantity of testimony, which they have ordered to be printed, to be laid before this House. Mr. Irving having resigned his seat as a member of Assembly from the sixteenth Assembly district of the county of New York, and no one having appeared against Mr. Weed, your committee feel that they have discharged their duty in reporting the testimony taken before the committee to the House, with the following resolution:

Resolved, That, in the judgment of this House, the conduct of Mr. Irving, late a member thereof from the sixteenth Assembly district in the county of New York, during its session on Friday evening, April 7th, 1871, was a high breach of its privileges and the rights of its members, and if he (Mr. Irving) had remained a member of this House, he would have deserved the severest punishment in its power to inflict.

THOMAS C. FIELDS.
THOMAS G. ALVORD.
G. W. NICHOLAS.
D. C. LITTLEJOHN.
ALEXANDER FREAR.

Mr. Speaker put the question whether the House would agree to said report, and it was determined in the affirmative. Ayes, 104; noes, none.

Assembly Journal, 1871, pages 1406, 1407.

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